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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in the Islamic Republic of Iran, submitted by the Special Representative of the Commission on Human Rights, Mr. Maurice Danby Copithorne, pursuant to Commission resolution 1998/80

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Executive Summary

President Khatami's plans for a tolerant, diverse and law-abiding society continue to unfold and their full implementation could have a major impact on human rights in the Islamic Republic of Iran.

Progress is being made, notably in the area of freedom of expression, but it faces considerable resistance.

The status of women is a high-profile subject but with little progress so far in sight on core issues.

The status of minorities continues to suffer benign neglect.

In some aspects of the legal system, the beginnings of change and of progress are in sight.

There continues to be great store set in the further development of democracy in Iran.

The condition of the Baha'is remains unchanged or perhaps, in some respects, it has worsened.

There has been a rash of disappearances and suspicious deaths that have created great unease in the country.

Introduction

1. In the period under review, from 1 September to 15 December 1998, progress continued to be made towards President Khatami's goal of a civil society, tolerant, diverse, and operating within the rule of law. Human rights - individual and group - were at the centre of this process. In the open atmosphere that now exists, it was not difficult to follow the progress as well as the failures.

2. For some, the progress is frustratingly slow. For others, it is proceeding in such a way as to threaten Islamic verities, the very basis of the Islamic Republic. The discourse is a remarkably open one which itself speaks for the enhancement of the freedom of expression in the country.

3. Indeed, this freedom is the terrain on which the debate, the struggle, is largely being waged. There has been a steadily increasing institutionalization of the paradigm within which this and its related rights can be safely exercised. The edges of the paradigm are still rough and subject to much controversy, but the trend is clear and said to be irreversible.

4. In certain legal areas including the court system and the re-emergence of the Bar Association, there is the prospect of change that must benefit human rights in the country.

5. Other areas, notably the status of women, are the subject of much attention. The advocates of change became ever more outspoken and now include

members of the political elite. However, the progress to date continues to be at the periphery; there is little sign so far of a willingness to tackle core issues.

6. The status of minorities continues to be an apparently forgotten one in the Government's plans and the full implications of the term "diversity" appears yet to be fully recognized.

7. Overall, opposition to the President's plans does not seem to have diminished. Indeed, there is a fear that the struggle may be developing a raw, even violent, edge. A rash of unexplained disappearances and suspicious deaths of intellectual and political activists has set nerves on edge and reinforced fears for the further development of a law-abiding society.

8. With regard to cooperation with the Commission on Human Rights, the Special Representative would note that the Government has not issued an invitation to him during the period under review, and he has thus not been able to visit Iran since February 1996. On the other hand, he does acknowledge the issuance of an invitation to the Working Group on Enforced or Involuntary Disappearances to visit Iran.

I. THE SPECIAL REPRESENTATIVE'S ACTIVITIES AND SOURCES

9. The Special Representative introduced his fourth report to the Third Committee of the General Assembly (A/53/423, annex) on 6 November 1998. While in New York, he held consultations with representatives of the Government of the Islamic Republic of Iran and representatives of several non-governmental organizations based in North America. The Special Representative travelled to Geneva from 7 to 17 December 1998 to draft the present report. The extensive programme for his stay in Geneva included a number of consultations and meetings with senior officials from the Iranian Government and the Office of the United Nations High Commissioner for Human Rights (OHCHR). He also met with representatives of various non-governmental organizations, and he received representations from interested persons concerning alleged human rights violations in the Islamic Republic.

10. In seeking to discharge his mandate, the Special Representative has used many sources for information, including the Government of the Islamic Republic, other Governments, individuals, non-governmental organizations and the Iranian and international media. In Geneva, the Special Representative had an opportunity to participate in an inter-agency informal consultation organized by OHCHR to discuss and exchange information among various United Nations and other intergovernmental agencies about the human rights and humanitarian situations in the Islamic Republic.

11. During the period under review, the Special Representative received written communications from the following non-governmental organizations: About Iran; Amnesty International; Human Rights Watch; Baha'i International Community; Committee for Defence of Liberty in Iran; Committee for the Defence of Prisoners in Iran; Committee to Protect Journalists; Democratic Party of Iranian Kurdistan; Dr. Homa Darabi Foundation; International PEN American Center; International PEN Writers in Prison Committee; National Council of

Resistance of Iran; Reporters Sans Frontières; Society for the Defence of Political Prisoners in Iran; Spectrum Institute; The Constitutionalist Movement of Iran.

II. FREEDOM OF EXPRESSION

12. In the period under review there has been increased turbulence in this sector. On the one hand, President Khatami was quoted in a foreign wire service report of a State television broadcast calling for more transparency in State media. "We are only fooling ourselves if we cover up realities in our society or the world. People will eventually find out somehow what is happening".

13. On the other hand, there was increased pressure on the press. A number of journals were banned or suspended for such offences as "insulting the late Ayatollah Khomeini", "altering remarks of the honoured Imam and publishing them in an insulting way", "distorting news and insulting the war disabled", carrying out "activities against national security", publishing "lies and insults" and "disturbing public opinion", and "dissemination of fabrications and insults". In some of these cases the officials of the journals concerned were detained; in some they were sentenced to such punishment as a one-year suspended jail sentence and a fine. In at least one case, a journal was shut down by court order and four of its journalists detained for a month, reportedly without access to family or lawyers. See annex I for further details.

14. The comments of several Iranian leaders seemed to have had a role in these developments. One said that "critique and criticism of the government policies are not bad but when someone attempts to undermine the foundations of the Government, it is treason and not freedom of expression". Another declared "these [newspapers] want to mislead the people. This is a cultural plot to overthrow our system". Two thirds of the Majlis deputies signed a letter declaring "those who write against the principles of Islam should be confronted as those working against the security of the State". A Cabinet Minister was quoted as saying that a number of arrested journalists had admitted they were working to transform Iran into a secular State.

15. To add to the uncertainty, there were quite evident differences of opinion over the press law regime among the executive, judicial and legislative branches. In a long interview published in an Iranian daily in September, the then press adviser to the President said that the ambiguity in the present regime was a major cause of the problem. There were significant differences of opinion between the executive and the judiciary over the interpretation of freedom of the press. Although she favoured an amendment to the law, such an effort at the present time might actually result in a loss of freedom for the press. She also suggested that part of the problem was the tendency of some journalists to "abuse freedom of the press for their evil ends". It was the responsibility of the Press Supervisory Board, which had a representative from both the judiciary and the legislature, rather than the courts, to supervise the press. The judiciary, she said, "was expected to understand this new atmosphere based on people's expectation after the 23 May presidential elections". As for the legislature, she said that the main reason for approving a new restrictive law concerning women was that the

majority of the Majlis deputies were unaware that the Press Law already covered this subject. She criticized the new law for failing to use legal terminology, thus leaving it open for persons "to use their personal taste to restrict the right of the press".

16. The Special Representative would note that article 168 of the Constitution states that inquiry into press offences shall be in an open court before a jury. This requirement does not seem to have been met in some of the recent cases against the press. Further, there is open competition for jurisdiction over the press from both the Revolutionary Courts and the Cleric's Court.

17. In the course of a long conversation with the Deputy Minister of Culture and Islamic Guidance, the Special Representative was briefed on the operation of the Press Supervisory Board. Over the past seven years there have been 250 complaints with 150 of these proceeding to hearings; 100 were dismissed by the jury and 50 were found to be valid. Only five or six papers have lost their licences over the period.

18. There are differences of view on the interpretation of article 24 of the Constitution which provides that the press should be free to express views and opinions subject to certain restrictions. This provision is echoed in articles 3 and 5 of the Press Law which also contains a definition of constructive criticism or fair comment. There are nine types of criticism defined in the Law as unconstructive. Some of these have never been invoked. Most complaints have been made under the heading of defaming officials, organs of Government or private individuals. The system is recognized as not being ideal but better than anything in the past. The Deputy Minister asserted that there was today objectivity and diversity in the Iranian press and that prepublication censorship did not exist.

19. One task the new Government had set for itself was to strengthen the public's confidence in the press. Some success is now evident in the increase in circulation from 17 per 1,000 population to 35 per 1,000 over the 18 months. The number of provincial publications has grown considerably to 281 of which 12 are dailies. There are currently around 1,200 press licences in existence of which 800-900 are active. There are now 50 dailies across the country. There are 30 ot er licences for dailies which for the moment are published less frequently.

20. The Deputy Minister said the economic situation of the press has been strengthened by the new Government's allocation of newsprint strictly according to circulation, and by its facilitation of the construction of a domestic pulp and paper facility to avoid the need for the industry to spend foreign exchange. There are some remaining subsidies for newsprint and printing equipment, but the Government hopes to phase them out and, if necessary, subsidize domestic pulp and paper production.

21. Another important development has been the establishment of professional press associations. In 1997, the Professional Association of Journalists was established which now has about 1,000 members. The Association has been

actively defending the rights of journalists and criticizing some procedures used against them. At least six other professional associations related to journal publication have also been established.

22. The Special Representative, while accepting that significant progress has and is continuing to be made, believes that serious weaknesses remain particularly in the area of the press control regime. As the Special Representative has urged before, and accepting of the fact that the rights of free speech cannot be absolute, there does need to be greater clarity in what constitutes fair or constructive comment. Further, discipline must come from one independent tribunal that acts according to the law and not personal taste, and in a transparent manner.

23. With regard to film and theatre, the Deputy Minister said there had been significant improvement. Ambiguities and personal taste had been removed from the clearance process which was now routine, a situation that the Special Representative confirmed with an Iranian film director. The problem now was the lack of theatre and film venues.

24. With regard to books, he said that publishers now received permanent rather than 12- or 18-month publishing licences. Licences to publish a particular title are usually granted within a few days. There is an appeal process. Only 100 titles have been rejected since the new Government took office; some 15,000 titles are now being published each year. The reissuance of a title no longer requires a new licence. The titles of books rejected and the reasons are reportedly published in the press.

25. The Special Representative cannot conclude this section without reference to the chilling effect that the recent murders of intellectual and political figures immediately had on open discourse and freedom of expression in Iran. Those involved with efforts to reactivate the Writer's Association have become marked figures. There have been calls from outside the country for an international inquiry. This matter is discussed further in chapter VIII.

III. THE STATUS OF WOMEN

26. In his interim report to the General Assembly, the Special Representative concluded that despite well-meaning policy declarations, the creation of new women's organizations, and significant publicity about the importance of women, the Government had so far achieved little improvement in the condition of Iranian women.

27. In one sense, gradual change has been under way for some time. For example, the illiteracy rate among women is said to have dropped from 22 to 9 per cent over the period since 1979. Indeed, according to a foreign press account, Population Action International in Washington reported recently that Iran was one of the 10 countries to have made the most progress in narrowing educational inequality between the sexes; 30 per cent of doctors are said to be women. The recruitment of women to work in the police force was recently approved, admittedly to work chiefly in women-related functions. A female journalists' association has been established. Women are beginning to be appointed to senior diplomatic positions overseas. The first female

university chancellor has been appointed, albeit of a women's university. More appointments of women were made to the judicial service but none still to the position of presiding judge. Some of these developments are significant; some are symbolic.

28. However, the construction of walls continues. Despite widespread opposition as mentioned in earlier reports of the Special Representative, the "Medical Religious Standard Conformity Act" providing for the complete separation along gender lines of all medical services in the country - from hospitals to rural health centres to pharmacies to medical education - was finally passed into law. The one reported exception is emergency wards. Women travelling in trains without a male companion are to have separate compartments set aside for them. In some Iranian cities, a park is being designated for the exclusive use of women. Both of these steps were considered to be primarily for the safety and convenience of the women concerned. A new passport office has been opened with separate facilities for men and women. In the Special Representative's opinion, separate but equal does not meet international standards for gender equality (see E/CN.4/1997/63).

29. The managing director of the judiciary's Bureau of Women's Affairs is quoted in the Iranian press as saying the most important problem women face in the courts is "the biased approach to their rights". She added that legislation that is meant to reduce the hardship that women undergo in areas such as divorce and landlord-tenant relations "does not get properly implemented". Anecdotal stories in the press certainly support these allegations.

30. For his part the Deputy Speaker of the Majlis is reported in the press to have stated that there was a long way to go before women could enjoy their full rights. He acknowledged that there were laws to be amended in this regard.

31. An education ministry official warned of the deterioration in the health of schoolgirls because of the lack of physical exercise, there being less than 240 hours of physical education throughout the entire secondary school education.

32. Violence against women in the family appears to be gaining more prominence. There are frequent anecdotal stories in the press of horrific cases of wife abuse. The situation is made worse by the discrimination in court sentences of Deyah (blood money) depending on whether the victim is a woman or a man. The Government has recently published several papers on the subject including a three-year action plan. These papers do acknowledge that a major problem exists and outline a plan that includes:

Increasing public awareness of the problem;

Preparing new laws to prevent violence against women and provide financial support for victims and vulnerable women;

Establishing women's shelters, hotline facilities and job-training facilities for vulnerable women.

33. In this case the Government has established a practical action plan and clear time thresholds. It remains to be seen whether they will be fulfilled.

34. For his part, the Special Representative believes that useful as many of these developments are, the various structural disabilities which Iranian women face are the heart of the problem. The Special Representative continues to believe these must be addressed squarely for there to be substantial, meaningful improvement in the status of women in Iran.

IV. THE STATUS OF MINORITIES

35. In this report, the Special Representative would draw attention to the international regime that applies to minorities, the highlights of which are set out in annex II. In Iran the reality appears to be that on the one hand, the Iranian Constitution assures minorities equality status, as set out in annex III; on the other, the laws contain numerous discriminatory provisions some of which are mentioned in annex IV.

36. The Special Representative would remind the Government of the concluding observations of the Human Rights Committee on the 1993 appearance of Iran before that Committee. 1/ On the subject of minorities in Iran, the Committee made clear its disappointment with the information provided by the Government at that time on this subject. The Special Representative would also draw attention to the concluding observations of the Committee on Economic, Social and Cultural Rights on the 1993 appearance of Iran before that Committee. 2/ The Committee categorizes the treatment of minorities in Iran as one of its "principal subjects of concern". More generally, the Special Representative would draw attention to the reportedly unimplemented recommendations of the Special Representative on religious intolerance with regard to the Islamic Republic (see E/CN.4/1996/95/Add.2, paras. 86-118).

37. The Special Representative would note that the Iranian Constitution includes a number of relevant equality provisions including articles 14, 15, 19 and 20. The Government needs to declare a commitment to the implementation of both the Iranian Constitution and of international standards, and to a timetable for implementation.

38. Some situations may require special treatment. The estimated 10 million Sunnis in Iran generally live in the border regions of the country. The Special Representative understands that while the Shias recognize Sunnis as fellow Muslims, there is reportedly a view in some Shia circles that conversion of the Sunnis is a worthwhile religious endeavour. This reportedly has given rise to occasional clashes in areas of mixed population, chiefly in west Azerbaijan, along the Persian Gulf and in Baluchistan/Sistan province. While such tension existed before the Islamic revolution in some areas, notably Sistan/Baluchistan, it appears to have worsened significantly since that time. The grievances of the Sunni Baluch community have been referred to in earlier reports of the Special Representative. They do not seem to be lessening. Indeed, there is a report of the community being warned in a threatening manner that the emigré Baluch leader Sheikh Molavi Abdolrahim Molazadeh had better abandon his publicity activities on behalf of the community, a report that officials deny as unfounded.

39. Sistan/Baluchistan is a harsh land with limited developmental prospects. Its economically disadvantaged condition has meant that its peoples, and the Baluch in particular, have below average education, health and job prospects. The traditional social structure as well as the continuing nomadic lifestyle of some compound the challenge of development. The transhipment of narcotics is one of the few economic activities available to many Baluch and, by all accounts, is seductively lucrative. There are also no doubt legitimate external security concerns in this exposed corner of the country. In this context, it should not be surprising that ethnic and religious differences are likely to come to the fore. It is a dangerous and tragic brew. The Special Representative urges the Government to treat this as an important and urgent development and human rights issue that it must address more vigorously than it had in the past.

V. THE STATUS OF THE BAHA'IS

40. The concern about the human rights situation of the Baha'is remains on the agenda of the Special Representative with fresh reports on situations of discrimination and even of persecution, including arbitrary detentions, arrests, raids on homes and confiscation of property. The freedom of Baha'is to travel outside of Iran continues to be impeded or denied altogether.

41. In late September, the Special Representative was informed that the death sentences against two members of the Baha'i faith had been confirmed by prison authorities in Mashhad, despite the assurances to the contrary provided to him earlier by the Iranian authorities (see annex V, para. 4). In response to the written inquiry of the Special Representative, officials stated that "the court found them guilty of charges of acting against national security and sentenced them to death", but "the defendants can still resort to appeal and/or clemency" (see annex V, para. 5). The Special Representative is following this case closely in the context of the earlier assurances given by the authorities that the death sentences on these Baha'is had been overturned.

42. Reports suggest that in the middle of December 1998, 17 Baha'is remained in detention, 6 sentenced to death, 7 to imprisonment for periods ranging from 3 to 8 years, and for the rest, to sentences which are not yet known. The charges reportedly include holding meetings and teaching their faith, cooperating with Baha'i educational activities and engaging in espionage activities of one sort or another.

43. The Special Representative's attention has been drawn to an apparently orchestrated raid between 29 September and 3 October 1998, in which over 36 faculty members of the Baha'i Institute of Higher Education (BIHE) were arrested in cities across the country. Those arrested were asked to sign a document declaring the closure of the BIHE and their undertaking not to cooperate any longer with it. The arrests, reported to have been carried out by officers of the Iranian Government's intelligence agency and the Ministry of Information, involved the seizure of some 70 computers, furniture, textbooks, scientific papers and documentary records. Four of those arrested still remain in custody - a fact which led the Special Representative to make a further inquiry of the Government (see annex V, para. 7).

44. A welcome development was the reported elimination of discrimination against Baha'i youth for enrolment in the pre-university year at the high school level. However, according to reports, their entry to universities continues to be refused.

45. Overall, the situation of the Baha'is has not improved; in some respects it has deteriorated. The Special Representative wishes to reiterate his appeal to the Government of the Islamic Republic to fulfil his outstanding recommendations (A/53/423, para. 45) as well as that of the Special Rapporteur on religious intolerance (see E/CN.4/1996/95/Add.2).

VI. LEGAL SUBJECTS

A. The courts

46. In his interim report to the General Assembly, the Special Representative noted the widespread debate that had emerged over the court system and more generally the legal system, as a prerequisite for the establishment of a civil society in the Islamic Republic. The Special Representative reported he had been informed by a senior official that an amendment bill to the existing legislation establishing the civil courts was to go to the Majlis shortly. The Special Representative is now informed by Mr. Mohammed Nassary, Deputy Prosecutor-General, that the bill of some 800 articles, part of which has been under discussion in the Majlis Judiciary Committee for two years, will be debated in the Majlis within a month.

47. Other reforms mentioned by the Deputy Prosecutor-General include the reduction of the requisite time served to be eligible for parole from two thirds of the sentence to one half. The prison term alternative for the payment of fines has been reduced from one day to be served for each 500 rial owing, to one day for each 50,000 rial owing, with the result that a large number of prisoners will now be released.

48. Since the Special Representative's last report, the Cleric's Court has come in for increased scrutiny with some critics arguing that it should be reformed and others that it should be abolished. Some argue that it is unconstitutional in that it was not established by legislation as required by the Constitution. Senior judiciary officials dispute this, arguing that there is legislation which refers to the Court and that in any case it was within the competence of the Leader to establish such a tribunal.

49. The mandate of this court is sweeping:

> All acts committed by clergy contrary to religious law;
>
> All disputes harmful to public security in which one of the contenders is a member of the clergy;
>
> All other cases entrusted to it by the Leader's office.

50. The cases are to be argued on the basis of religious law. Appeals are heard by another chamber of the Cleric's Court; the Supreme Court has no

jurisdiction in such cases. Defence lawyers have to be chosen from designated clergy. The hearings are not public and decisions are not usually made public. The Court apparently has authority to impose the death penalty. In November, the head of the Cleric's Court invited 14 clerics to form a press jury in the Cleric's Court.

51. In an earlier report, the Special Representative recommended that with regard to a number of clerics detained in Qum, as their offences were publicly declared to be ordinary crimes, the cases should be transferred to the civil courts where they would receive an open trial by jury and could be defended by a lawyer of their choice.

52. The Special Representative continues to believe that at this point in the Islamic Republic's history, it is difficult to justify the continued existence of such an apparently arbitrary and secretive tribunal. The Special Representative recommends that it be abolished, or at least that it be converted into a commission charged with settling theological disputes in the narrowest sense. The Special Representative sees the appointment of a press jury in the Cleric's Court as an ominous expansion of its jurisdiction, and a prescription for further confusion in the press regulation regime established by the Press Law.

53. In the Special Representative's view the experience of many other countries with such tribunals suggests that they inevitably deny a defendant what is today recognized as a fair trial, and that they are thus instruments of denial of human rights.

B. The Bar Association

54. In earlier reports, the Special Representative referred to the Government's repeated promises that there would be an election for the members of the Bar Executive Council as provided for in the Association's 1954 law but suspended since 1979. In 1997, following a new Majlis law, these elections were finally held. This 1997 law provided for the screening of the candidates by the Judges Court. In the event, 41 were confirmed out of 69, including 4 women. Out of the 2,000 lawyers in the central or Tehran Bar, 1,300 participated in the election.

55. The Special Representative recently had the opportunity to discuss this development with the newly elected President of the Central Bar Association Council, S.M. Jandaghi. The President frankly described the problems facing the Association, particularly the shortage of lawyers, if indeed lawyers are to play their role in fulfilling President Khatami's vision of a civil society. The Association has recently admitted 800 new candidates to its Bar admission course.

56. The President said that to make lawyers more accessible, the Bar Association has established a Legal Assistance Department which provides legal advice and, if appropriate, assistance in obtaining the services of a lawyer. The Special Representative noted the apparent difficulties faced by some disadvantaged groups such as the Baha'is in obtaining a lawyer, particularly a good one. The President said that every lawyer is expected to take on four pro bono cases a year. In court proceedings in which a lawyer is

required and is not already retained, the judge is expected to turn to the Association which will nominate four or five lawyers from among whom the judge will make a choice. With regard to the diligence and integrity with which such assigned lawyers advance their client's interest, the President acknowledged as possible the complaint brought to the Special Representative's attention of assigned lawyers seeming to play a passive role and, in some cases, being openly denounced in court by the accused as not telling the truth. He noted that there was a disciplinary court for lawyers within the Bar Association but it was only really becoming active since the election of the Bar Council.

57. There remains much to be done for lawyers to be able to play a significant role as advocates for human rights. One challenge is to obtain respect for the function of a lawyer by the various agencies of Government, including the judiciary. The open letter of the Association in August 1998 in which the shortcomings of the present court system were frankly laid out was a good start. Lawyers and legal officials are also beginning to speak out individually about the changes needed in the judiciary; the weaknesses are frequently described as poor training of judges, the absence of a judicial strategy, a lack of status for judges and lack of an appropriate judicial organization.

58. The Special Representative recommends that the Bar Association Council establish a strategy to identify and address the challenges facing the Bar, including a detailed description of goals and time-frames for achievement. The Council might also wish to consider exchange visits with Bar Associations in other countries.

C. Torture and other cruel, inhuman or degrading treatment or punishment

59. The Special Representative continues to receive reports of torture committed in Iran. It is safe to say that torture has been practised in Iran for a very long time. The Special Representative notes that it exists notwithstanding a specific provision in the Iranian Constitution banning it.

60. The most positive thing the Special Representative can say is to repeat the observations in his interim report to the General Assembly that for the first time some officials have been acknowledging the existence of torture, and secondly that its existence in Iran is now discussed in the press.

61. The Special Representative would urge the Government to move quickly to wipe out this inhuman and discreditable practice. As a first step, it might follow the same process it has used to address illegal detention centres, that is the appointment of a high-level inter-agency committee to examine the dimensions of the situation and recommend steps to be taken for its elimination.

62. One report of a stoning came to the Special Representative's attention, that of Khosrow Ibrahimi in Lahijan on or about 21 November, according to an Iranian daily. The individual concerned was said to have been able to extricate himself.

D. Executions

63. In his interim report to the General Assembly, the Special Representative noted that executions seemed to continue at a fairly high level. He reported that the Iranian authorities had agreed to cooperate in the provision of appropriate statistics. In the meantime, as reported in the Iranian press, there were probably some 155 executions from January to mid-December 1998, of which 60 were said to have taken place in public. These figures are generally regarded as being on the low side as it is widely assumed that many executions are not reported in the media.

64. The Special Representative again urges the Government to bring its policies in the matter of executions into line with Commission on Human Rights recommendations (resolution 1998/68).

VII. DEMOCRACY/A CIVIL SOCIETY

65. An important election held during the period under review, that for the Council of Experts, was held on 23 October amid controversy over the process of determining the eligibility of candidates. This was the first national election since the presidential election in May 1997 and it aroused considerable political interest for that reason.

66. The Council has in theory very substantial power. It appoints the Supreme Leader who has the final say on all State matters. The Council also has the power to oversee the Leader's work and to dismiss him if he fails to perform his duties properly. The Council has reportedly become more active in recent years in the matter of oversight.

67. Eligibility to stand for election to the Council is determined by the Council of Guardians. The spokesman for the Council was quoted in Iranian papers as declaring that the "most important criteria" were religious reputation and moral credibility, political and social insight and up-to-date knowledge of developments, loyalty to the Islamic Republic, and having "no record of political or social misbehaviour". He denied that factional, i.e. political, preferences played any role in determining eligibility. However, stories persisted of the use of examinations to disqualify applicants. Judging by press accounts, many applicants who failed to qualify complained openly that politics had played a role. In the event, 160 out of about 400 applicants, none of them women and only some 30-40 considered to be supporters of the President, were declared eligible, a proportion that gave rise to wide complaint that the process was not truly democratic.

68. Attention is now focused on State and local elections, the first since the Islamic Revolution in 1979. A bill was before the Majlis at the time of writing which would place approval of candidates in the hands of provincial executive bodies and would allow an appeal to the Supervisory Board or the Guardian Council only by refused applicants. It is expected that many more women will become candidates under this procedure. These elections, to be held on 26 February 1999, reflect an effort by the Government to make local governance more transparent and more responsible, in the President's words, to let people take charge of their own affairs.

69. Another important development is the emergence of the Presidential "Committee for Inspection and Supervision on the Implementation of the Constitution" (see annex V, para. 12). The mandate of the Committee is a strong one and it could go a long way in addressing the many apparent discrepancies between the Constitution on the one hand and the laws and practices on the other. One project the Committee reportedly has under way is preparing a definition of "political crimes"; another is said to concern the future of the Cleric's Court.

70. According to the Iranian press, a reorganization of the political structure of the country is under consideration. The objective appears to be to decentralize control over everyday activities of the people. Earlier there were reports of a proposal to loosen the control of the Guardian Council over the eligibility of candidates for national elections.

71. A number of new political parties were established in the period under review. One was a reformist political grouping of cultural and political figures. The founders of the Islamic Iran Participation Front declared they were seeking "freedom of thought, logic in dialogue and rule of law in social behaviour". This reportedly brings the total of licensed political groups to 50 although many of these are inactive for financial and other reasons.

72. Violence against politicians became more prominent. In September two reformist ministers of the Government were subjected to a public physical assault which was attributed to the extrajudicial group Ansar-i Hezbollah.

73. Two murders on 22 November by unknown assailants shocked many Iranians in the country and outside. The press estimated that 6,000 persons attended the funeral of Dariush Forouhar, the leader of the Iran Nation Party, and of his wife Parvanah. Mr. Forouhar was a veteran politician having among other roles served as Minister of Labour in the Bazargan Government. The Iran Nation Party was an unregistered but tolerated entity on Iran's political landscape. President Khatami termed the murders "a repugnant crime". The President and the head of the judiciary called for the immediate identification and bringing to trial of the perpetrators. A parallel with earlier unsolved murders of politicians was being drawn and rumours of a political dimension to the deaths persisted. Nine such activists have reportedly been killed in the last decade, half of them by the same method used in the deaths of the Foruhars. Reportedly, in none of the cases were the perpetrators known to have been found or brought to justice.

74. The Special Representative views these murders with regret and concern, concern that circumstances in Iran are not yet stable enough to permit dedicated politicians to serve their country without fear of physical attack and in some cases, for their lives.

VIII. DISAPPEARANCES AND SUSPICIOUS DEATHS

75. As this report was being prepared, considerable concern was being expressed inside and outside of Iran at a rash of disappearances and suspicious deaths of dissident literary and political figures:

The disappearance in August of prominent political dissident Pirouz Davani. There was an unconfirmed report in one Iranian paper in November that he had been killed (see annex V, para. 6);

The disappearance in November of Javad Sharif, formerly a dissident in exile, and his subsequent death officially attributed to a heart attack;

The murder in November of veteran political leader Dariush Forouhar and his wife (see para. 73);

The discovery on 9 December in the Tehran morgue of the body of a prominent poet, Mohammad Mokhtari, who had gone missing the previous week. Mr. Mokhtari was one of six prominent writers and intellectuals questioned by a Revolutionary Court in October and warned not to reactivate the writers union (see para. 25);

The discovery on 12 December of the body of a dissident translator and author, Mohammad Jafar Pouyandeh, who was also one of the six prominent writers and intellectuals questioned by the authorities in October.

76. These incidents suggest a pattern of harassment and persecution of moderate and often secular voices. It is being described as a challenge to the reformist policies of President Khatami, and as having a chilling influence on intellectual discourse. One journalist observed that "not since the revolution nearly 20 years ago has Iran witnessed such eerie, unexplained violence".

77. These incidents have been condemned by the Government, including the President. According to the press, significant efforts are being made by a dedicated investigative team to track down the culprits. For his part the Special Representative has called upon the Government to investigate thoroughly each of these cases, and to make the resulting reports public (see annex V, paras. 8-10).

IX. OTHER MATTERS

The fatwa against Salman Rushdie

78. In his interim report to the General Assembly, the Special Representative reported that as that report was in press, the media reported that an accommodation had apparently been reached between the Iranian and British Foreign Ministers. The agreement was contained in parallel press statements made on 24 September 1998 in New York.

79. In his statement to the Third Committee, the Special Representative said that he was concerned at the tenor of the comments that followed the agreement from various sources in Iran, some being senior political figures. These seemed to cast doubt on the agreement insofar as they declared that nothing had changed as a result of it. However, such comments appeared to die away in the month or so following the agreement.

80. The Special Representative notes with deep regret that after the agreement, the 15th Khordad Foundation again increased the bounty on Mr. Rushdie's life.

81. The Special Representative notes the progress made in this matter and trusts the remaining question concerning the bounty can now be put to rest.

Narcotics control

82. This issue continues to be a major problem for the Government. The Director of the State Prison Organization was quoted in the Iranian press as stating that 60 per cent of the 160,000 prisoners in the State system were there for drug-related offences. Most of the women in the system were there for drug offences. The Iranian press also carried stories indicating that significant seizures of narcotics continue to occur. An Iranian daily reported that the number of youthful addicts doubled last year. The punishment for drug trafficking was reportedly increased more than tenfold.

83. Meanwhile, according to foreign press stories, the United States Government has removed Iran from its list of drug-producing countries.

X. CORRESPONDENCE WITH THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN

84. The correspondence exchanged during the reporting period between the Special Representative and the Permanent Representative of the Islamic Republic of Iran to the United Nations Office at Geneva is described in annex V. Some of the correspondence concerned requests for information about individual allegations. Also during the period, the Special Representative sent urgent communications, jointly with other special rapporteurs, in which he appealed to the Government to ensure that those affected benefited fully from all the internationally recognized safeguards, particularly those provided for in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly by its resolution 43/173 of 9 December 1988.

85. While acknowledging the responses by the Government, the Special Representative encourages it to make further effort to respond to his outstanding requests for information concerning individual cases.

XI. CONCLUSIONS

86. The Special Representative has made a number of recommendations in the body of this report which reflect his conclusions. Despite considerable effort to enhance freedom of expression, there remain major uncertainties in the application of the Press Law that need to be eliminated. With regard to the status of women, there needs to be a clearer focus on the legal and practical discrimination they face. In the case of minorities, they must find a place in the Government's development plans. The status of the Baha'is also has to be addressed, perhaps in the context of the emerging civil society.

Court reform has to be pushed forward vigorously; the Cleric's Court should be abolished. The problem of torture must find a place on the Government's agenda.

87. The Government is now 18 months into its five-year mandate. Its plans for change as they are gradually becoming known, were and continue to be significant if not monumental. Progress has been uneven and objected to by many. The Government must find a way to establish the people's confidence in its plans in the face of attempts, including violent ones, to divert reform efforts. The Government must stay the course; it cannot afford to lose momentum.

Notes

1/ See Official Records of the General Assembly, Forty-eighth Session, Supplement No. 40 (A/48/40), paras. 190-270.

2/ Official Records of the Economic and Social Council 1994, Supplement No. 3 (E/1994/23-E/C.12/1993/19), paras. 122-130.

Annex I

FREEDOM OF EXPRESSION

Some incidents relating to press freedom that took place from September to December 1998 are related below:

16 Sept. The newspaper Tous was shut down by a Revolutionary Court for publishing articles considered detrimental to the nation. It had earlier published a digest of the statements of Tehran district mayors about their treatment in detention. Four Tous journalists were arrested.

17 Sept. Two newspapers, Tavana and Rahne Now, were ordered shut down because they published articles critical of some clerics.

22 Sept. Two senior officials of the official press agency IRNA were detained for a day because of complaints against them.

23 Sept. The Minister of Culture and Islamic Guidance supported the action to shut down Tous.

27 Sept. 265 journalists reportedly began a protest against what they saw as a campaign against the Iranian press.

27 Sept. The closure of Tous was formalized by the revoking of its licence by the Press Supervisory Board, an action that was criticized as being beyond the powers of the Board.

28 Sept. The proprietor of Zan appeared in court to answer charges of publishing lies in her paper. The charges were dismissed.

29 Sept. A court in Tehran banned the monthly Jamee Salem after finding it guilty of charges including insulting the late Ayatollah Khomeini.

1 Oct. Navid-e-Esfahan, a weekly in Isfahan, was temporarily closed on charges of "acting against the country's security, publishing lies and disturbing public opinion, as well as promoting opposition groups".

4 Oct. A court warned five writers involved in reactivating an association of Iranian writers that they could face charges of "anti-State activity", because the association was an "illegal underground political organization".

5 Oct. Asre-e-Ma, a biweekly publication, was suspended for six months by a Tehran court on charges of "fabrication and dissemination of insults".

5 Oct. A court announced that the managing director of Sabh was suspended from his position for four months for making accusations against a named individual.

15 Oct. The four Tous journalists were released. One of them later said that they were not told what charges they had been arrested for. "Our biggest sin ... was to have taken seriously calls for boosting civil society and political development".

7 Dec. The Press Supervisory Board convicted the managing director of Farda of publishing slanderous material against the armed forces and banned him from press activity for one year.

By at least one account, there were 25 such incidents in the period September to December 1998.

Annex II

THE STATUS OF MINORITIES

The following norms are the major elements in the international regime for the protection of the rights of minorities:

Article 27 of the International Covenant on Civil and Political Rights refers to the protection of the rights of ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language;

In its general comment on the rights of minorities in the Covenant, the Human Rights Committee has stated that special measures to assist disadvantaged groups may be required; in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct these conditions (General Comment 23 of 6 April 1994, para. 6.2);

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (General Assembly resolution 47/135 of 18 December 1992) is the most comprehensive statement of the legal rights of minorities and the obligations falling upon States in this regard;

In resolution 1998/19 the Commission on Human Rights entitled "The rights of persons belonging to national or ethnic, religious and linguistic minorities":

> "Reaffirms the obligation of States to ensure that persons belonging to national or ethnic, religious and linguistic minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
>
> "Urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities, as set out in the Declaration, including through the facilitation of their participation in all aspects of the political, economic, social, religious and cultural life of society and in the economic progress and development of the country."

Annex III

IRANIAN CONSTITUTIONAL PROVISIONS ON MINORITIES

In its report on the measures taken by Iran for the implementation of the recommendations of the Vienna Declaration and Plan of Action, the Government has identified the following articles of the Constitution as relevant to the protection of ethnic religious and linguistic minorities:

Article 14 provides for the treatment of non-Muslims in conformity with ethical norms and the principles of Islamic justice and equity and "to respect their human rights".

Article 15 protects the use of regional and tribal languages in the press and mass media as well as for the teaching of their literature in schools.

Article 19 states that all people of Iran whatever their ethnic group or tribe, "enjoy equal rights".

Annex IV

DISCRIMINATORY LAWS

Some of the discriminatory laws faced by minorities in Iran are:

Article 207 Islamic Criminal Code

This section provides for punishment in the form of retribution (Ghesas) when a Muslim is killed. When the victim is a non-Muslim, the law is silent and by construction, no punishment needs to be enforced.

Article ... Islamic Criminal Code

If a non-married Muslim man commits fornication, his punishment is 100 lashes and if a non-Muslim man fornicates with a non-Muslim woman, the punishment is the same. However, if the woman is a Muslim, the punishment for the non-Muslim man is death.

Article 121 of the Islamic Civil Code

The punishment for "homosexual touching" (Tafkheey) and similar acts, if there is no entry, is 100 lashes. However, if the subject is a non-Muslim and the object a Muslim, the punishment for the subject is death.

Article 881 of the Civil Code

A non-Muslim shall not inherit from a Muslim if among the heirs of the deceased there is a Muslim.

Article 163 of the Constitution and the Conditions for Selection of Judges Code

Only a male Muslim may become a judge.

Articles 297 and 300 of the Civil Code

These provide for blood money (Deyeh) for the killing of a Muslim man or woman. By construction, non-Muslims are not entitled to blood money.

Annex V

CORRESPONDENCE BETWEEN THE SPECIAL REPRESENTATIVE AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN SEPTEMBER-DECEMBER 1998

1. To begin with, there is an incoming letter that was overlooked in previous reports. A letter dated 30 June 1998 from the Permanent Representative contained the following information in response to the Special Representative's letter dated 9 October 1997 in which he joined the Special Rapporteur on the question of torture inquiring about the allegations of conditions in the prisons of Ahvaz, Isfahan, Shiraz and Tehran, and of a hunger strike which resulted in the deaths of six prisoners (see E/CN.4/1998/59):

> "I would like to provide you with the following information received from relevant authorities from Tehran:
>
> "1. There has been no hunger strike in the said prisons. Torture and maltreatment of prisoners are categorically denied.
>
> "2. Out of six individuals mentioned in the letter of the Special Representative only Mr. Abdol Reza Abedi was identified who has been released on 3 September 1994 and is alive.
>
> "3. In order to enable the judiciary to pursue the other cases referred to in the letter, it would be highly appreciated if further detailed information, including their place of imprisonment were provided."

2. On 18 September 1998, the Special Representative addressed a letter to the Minister for Foreign Affairs requesting an information on the circumstances in which 60-year-old Ruhollah Kad-Kuhzadeh, said to be an active member of Tehran's Jewish community, was reported to have been executed for helping Jews to leave the Islamic Republic of Iran. The Government has not responded yet.

3. On the same day, the Special Representative transmitted another letter to the Minister for Foreign Affairs requesting a full explanation of the circumstances of the detention of Abbas Amir-Entezam, a Deputy Prime Minister under the transitional Government in 1979 and 1980. He was detained on 8 September 1998 at his home in Tehran following an interrogation earlier that day concerning allegedly defamatory statements that he made about the former director of the Iranian Prisons Organization. It is further reported that on the following day, a court ordered his release but he was not in fact released, it being explained to his family that his previously suspended life imprisonment sentence had been reimposed. The Government has not responded yet to this communication.

4. The Special Representative sent to the Permanent Representative, on 2 October 1998, an urgent appeal requesting verification of the alleged confirmation by prison authorities in Mashhad of death sentences against

Sirus Zabihi-Muqaddam and Hedayat Kashefi Najafabadi, both members of the Baha'i faith. The Special Representative recalled in this context his meeting with the Iranian Prosecutor General, Ayatollah Moghtadai (see A/53/423), who had informed him in person that the death sentences on these Baha'is had been overturned and that instead, they would probably be sentenced to a term in prison.

5. In response to the above-mentioned communication, the Permanent Representative, by a letter dated 7 October 1998, informed the Special Representative of the following:

> "I would like to provide you with the below information received from relevant authorities in Tehran:
>
> "Following the rejection by the Supreme Court of the death sentence on Messrs. Syrus Zabihi and Hhedayat Kashefi, the defendants, in accordance with due process of law, were retried by another competent court in Mashad. The court found them guilty of charges of acting against national security and sentenced them to death.
>
> "However, the verdicts are not finalized yet and require further confirmation by the Supreme Court.
>
> "In addition should the Supreme Court confirm the verdicts, the defendants can still resort to appeal and/or clemency."

6. On 4 November 1998, the Special Representative and the Chairman of the Working Group on Enforced or Involuntary Disappearances transmitted to the Minister for Foreign Affairs a joint urgent appeal requesting they be informed of the appropriate investigations in order to clarify the fate and whereabouts of Pirooz Faghaei Davani, a political activist. He was reported missing since he had left his home in Tehran on Tuesday, 25 August 1998. It was alleged that he may have been kidnapped by Iranian security forces. Sources also reported that Mr. Davani had established the "Union for Democracy in Iran" in December 1997, an organization which worked for democracy, independent workers' unions, the defence of prisoners and support for their families, and freedom of association, speech and religion. In addition, he had established the "Payame Piroz" publishing company which published analyses of politics and human rights in Iran.

7. On 14 December 1998, the Special Representative sent a letter to the Permanent Representative requesting information about the continued detention of four members of the Baha'i Community, Ziaullah Mirzapanah, Farzad Khajeh, Habibullah Ferdosian and Dr. Sina Hariman. It was reported that they were among those arrested in early October 1998 on charges of cooperating with the Baha'i Institute of Higher Education and, unlike others, not yet released.

8. Following reports that Majid Sharif, Mohammad Mokhtari and Mohamad Jafar Pouyandeh, all said to be writers, were found dead in suspicious circumstances after having disappeared on 23 November 1998, 3 and 9 December 1998, respectively, the Special Representative joined the Special Rapporteurs on extrajudicial, summary or arbitrary executions, and on the promotion and

protection of the right to freedom of opinion and expression in an urgent letter transmitted on 15 December 1998 to the Minister for Foreign Affairs.

9. The above joint communication also referred to the reported killings on 22 November 1998 of Dariush Forouhar and his wife, Parvaneh Forouhar, both prominent critics of the Government, and requested the Government to further the investigation thereon, and to make public the results thereof.

10. In this regard, the Special Representative and the two Special Rapporteurs expressed their deepest concern about the safety and physical integrity of all Iranian political and intellectual dissidents, including that of Pirooz Faghaei Davani (see para. 46). They requested the Government to provide any information on the above-mentioned cases and on any steps taken by the competent authorities in compliance with article 3 of the Universal Declaration of Human Rights and articles 6 and 19 of the International Covenant on Civil and Political Rights.

11. By letters dated 15 September 1998, 5, 13 and 26 October 1998, 5 and 23 November 1998 and 2 December 1998, the Permanent Representative provided the Special Representative with the text of several articles on various subjects published in Iranian newspapers.

12. By a letter dated 8 September 1998 the Permanent Representative forwarded to the Special Representative the text of President Khatami's order No. 25822 of 29 November 1997 on the establishment of the "Committee for Inspection and Supervision on the Implementation of the Constitution". The main duties of the Committee are, inter alia, "to regulate policy for the implementation of the Constitution, with particular preference which should be given to articles that contain individual and social rights of the Nation, and to submit it to the President; to submit amendatory and supplementary proposals as to laws and regulations for better and comprehensive implementation of the Constitution; and to regulate and suggest educational and research programmes, in order to familiarize the Nation of their legal rights, and to adopt appropriate approaches for discharging these rights".

13. On 9 September 1998, the Permanent Representative transmitted a letter to the Special Representative forwarding copies of the following documents: "A report on the measures taken by the Islamic Republic of Iran on the Elimination of Domestic Violence Against Women since 1994", "National Plan of Action on the Elimination of Domestic Violence Against Women" and "The last improvements in the field of human rights in the Islamic Republic of Iran".

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the situation of human rights in Rwanda submitted by the Special Representative, Mr. Michel Moussalli, pursuant to resolution 1998/69

GE.99-10889 (E)

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Introduction

1. In its resolution 1998/69, the Commission on Human Rights decided to extend the Special Representative's mandate for a further year and requested him to report to the General Assembly at its fifty-third session and to the Commission at its fifty-fifth session. The Commission called for close consultation between the Special Representative and the Government of Rwanda regarding the functioning of the future national human rights commission. The present report, submitted in accordance with resolution 1998/69, is the fourth submitted by the Special Representative pursuant to his mandate.

I. MISSIONS OF THE SPECIAL REPRESENTATIVE

2. In pursuance of the objectives of his mandate, the Special Representative undertook three missions to Rwanda in 1998, the first in January, the second in June, and the third in August-September. In view of developments following the departure of the Human Rights Field Operation from Rwanda, especially in respect to events in the north-west of the country and the necessary measures to be taken for the setting up of the National Human Rights Commission, the Special Representative twice sent a Special Assistant to Rwanda. 1/ On his latest mission to Rwanda, from 11 to 23 January 1999, the Special Representative was accompanied and assisted by the Human Rights Research and Development Analyst seconded to him by the Danish Centre for Human Rights and by the Desk Officer of the Office of the High Commissioner for Human Rights. The Special Representative is very grateful for this support.

3. The Special Representative wishes to express his deep gratitude to the Government of the United Kingdom for providing support to his mandate, thanks to which he was able, in particular, to send a special assistant to Rwanda. He would also like to thank the United Nations Resident Coordinator and United Nations Development Programme (UNDP) Resident Representative in Rwanda, Mr. Stephen Browne, and his colleagues for the most helpful advice and support which they extended to him and his team.

4. In the preparation of the present report meetings were held with personalities and officials from various branches of the Government of Rwanda, 2/ with ambassadors and heads of diplomatic missions in Rwanda; with representatives of United Nations agencies; and with national and international non-governmental organizations dealing with human rights and related issues in Rwanda.

5. A visit to the north-western prefecture of Ruhengeri was arranged by the Minister of Gender, Family and Social Affairs and the Minister of Youth, Sports, Culture and Vocational Training. This visit to various sites and villages in the area proved to be most useful to the Special Representative and enabled him to have a direct perception of the situation of the population and of the realities on the ground.

II. OBSERVATIONS OF THE SPECIAL REPRESENTATIVE

A. Consequences and implications of the closure of the United Nations Human Rights Field Operation in Rwanda (HRFOR)

6. The main cause for the closure of the Operation on 28 July 1998 was the inability of the Office of the High Commissioner for Human Rights on the one hand, and the Government of Rwanda on the other, to reach an agreement on the issue of "monitoring" human rights in the country. It must be pointed out, however, that apart from this point, there was overall agreement between the two sides on all the other aspects of the HRFOR's mandate. Indeed, the Special Representative stated in his last report to the General Assembly on the situation of human rights in Rwanda (A/53/402, annex, para. 13) that the Government had appealed for more emphasis to be placed on capacity-building, technical cooperation, training and education. OHCHR, for its part, saw HRFOR's monitoring function as an indispensable component in assisting the Government to address problems, as a basis for dialogue to diagnose the needs, and as encouragement to the international community to provide the help necessary to do so (see ibid., para. 14 and A/52/486/Add.1/Rev.1, annex).

7. The withdrawal of HRFOR under circumstances where no national institution existed to continue the functions it had assumed thus caused great concern over the future of human rights in the country, both to the High Commissioner for Human Rights and to the entire international community. The Special Representative learned that the Government of Rwanda equally regretted that HRFOR had been withdrawn. This convergence of views was expressed quite clearly in the Rwandan Government's five-point human rights plan which was presented at the time of the negotiations which preceded the closure of the Field Operation. 3/

8. The assistance which was lost with the departure of HRFOR is candidly spelt out in an internal report of October 1997. That report, while acknowledging shortcomings in HRFOR's operational capacities, listed a number of the operation's achievements in areas such as training and support for national institutions, especially in the administration of justice, the penitentiary system, assistance to genocide survivors, and in human rights education and promotion. 4/ The Special Representative during his last two fact-finding missions was consistently given this message by all his interlocutors, regardless of whether they were from Government, NGOs, or ordinary members of civil society.

9. In this connection, it is fortunate and significant to note that, in her latest report on the situation of human rights in Rwanda to the General Assembly (A/53/367, annex, para. 17), the High Commissioner for Human Rights declared that her Office was "committed to pursuing a dialogue with the Government of Rwanda in connection with its longer-term human rights needs and to encouraging the emergence of a human rights culture as well as sustained development in the country". As for the Government of Rwanda, its readiness to reactivate collaboration with OHCHR has been amply conveyed to the Special Representative by persons at all levels, especially during his latest mission to Rwanda.

B. Steps toward the creation and effective functioning of an independent national human rights commission

10. The Special Representative noted with great satisfaction that on his advice and recommendation, and following the adoption of resolution 1998/69, the Rwandan authorities, who had initially set out to create the National Commission on Human Rights by presidential decree (Presidential Order No. 26/01 of 11 November 1997), decided to review this decree and to submit a new draft bill to the National Assembly regarding the establishment of the National Human Rights Commission as provided for in the Arusha Accords and as enshrined in the Basic Law of Rwanda. This should enhance its legitimacy in the eyes of civil society, its effectiveness and its independence (A/53/402, annex, para. 21). The draft bill was indeed submitted to the National Assembly during the Special Representative's visit to Rwanda and was adopted by the National Assembly on 19 January 1999. It has now been submitted to the Constitutional Court for final verification before it can be signed by the President of the Republic to enter into force after publication in the Official Gazette. This process will hopefully be concluded in February 1999.

11. In light of the need to attract the most qualified persons to the membership of the Commission and to ensure their full independence, the Special Representative welcomes the provisions in the bill that the Chairman of the Commission will have the rank of minister and that the other members have the rank of Secretary-General, and that in the exercise of their duty, they are subject only to the jurisdiction of the Supreme Court (which means, according to the President of the National Assembly, that they will enjoy immunity equivalent to that which is conferred upon members of Parliament). The Special Representative further notes with satisfaction the provision in the law which places the budget of the National Commission on Human Rights within the national budget.

12. The Special Representative was assured by the Rwandan authorities that the list of the names of the candidates to be submitted by the Government to the National Assembly was in its final stages of preparation and would soon be submitted to the National Assembly so that the process of appointment of the seven members of the Commission by the National Assembly could be completed by the end of February 1999.

13. In view of these significant and positive developments, there is urgent need for measures to be taken to support and encourage the efforts being made by the Rwandan authorities. OHCHR, should jointly with the Special Representative, find a way to bring assistance to the newly appointed members of the National Human Rights Commission by organizing a public workshop or round table which would bring together regional and international experts with representatives from the National Assembly, the Government, the judiciary and civil society in a wide public debate on how the National Human Rights Commission can be made an independent and effective institution on the basis of recognized international norms, in accordance with resolution 1998/69.

14. The Special Representative would be very pleased to be able to report on these positive developments during his oral presentation to the Commission on Human Rights in early April 1999.

15. In pursuance of the above objectives, the Special Representative appeals to the international community, both collectively and on a bilateral basis, in their cooperation with the Government of Rwanda, to extend to the National Human Rights Commission the full financial and technical support that will enable it effectively to achieve its important goals. The donor countries and other partners of Rwanda should welcome the setting up of the National Human Rights Commission under these conditions and take it as further evidence of the Government's commitment to the establishment of the rule of law, the development of a culture of human rights and the ending of a tradition of impunity in Rwanda.

16. The Special Representative notes that the presidential decree of November 1997 providing for the establishment of the National Human Rights Commission was issued together with another whose objective is to establish the Rwanda National Unity and Reconciliation Commission. The functions of the latter body are complementary to those of the National Human Rights Commission as demonstrated in article 5 (v) of the latter decree which states that one of the (prospective) functions of the Commission is "... to sensitize Rwandans on their rights, to respect other people's rights and to build among them a culture of always fighting for their rights". The Special Representative is pleased to note that in this case, too, the Government of Rwanda had decided to review the presidential decree which established the Rwanda National Unity and Reconciliation Commission and submitted a draft bill on this matter to the National Assembly. The National Assembly concluded its debate on the bill which will be promulgated as a law when signed by the President of the Republic.

C. Security conditions and human rights

17. The security situation in Rwanda is very complex as it involves the geopolitical interests of various regional as well as extraregional States. It is especially intricately intertwined with the situation in the Democratic Republic of the Congo where the civil war is providing the former militia and ex-FAR (Rwandese Armed Forces) insurgents an opportunity to fight against the Rwandan forces alongside the Congolese army and its allies. The Rwandan Vice-President and Minister of Defence, Major General Paul Kagame, is reported to have stated recently that his country's involvement in the Democratic Republic of the Congo "is a question of the survival of [the] nation and its people", adding that the security questions posed by that country were vital to the internal security of Rwanda. 5/

18. The part of the country where the security situation has been most fragile is the north-west (prefectures of Gisenyi and Ruhengeri) bordering with the Democratic Republic of the Congo. Across the border in the Kivu region of the Democratic Republic of the Congo, the population includes immigrants and refugees from both Rwandan ethnic communities. These include perpetrators of the 1994 genocide and the hostage population which they brought with them in their flight to "refugee camps". It was from this complex and volatile situation in the Kivu region that the rebellion arose which led to the overthrow of President Mobutu's regime in Zaire and the advent of Laurent-Desiré Kabila to power in the newly renamed Democratic Republic of the Congo. 6/

19. There is general consensus among independent observers in Rwanda that the level of violence and human rights violations in the north-west and elsewhere has noticeably abated since mid-1998. This may partly be due to some preventive and punitive measures which the Government in Kigali has taken in some cases regarding crimes committed by the military. There is a Military Prosecutor's Office (*Auditorat militaire*) and it endeavours to act as a deterrent to those in the military who disregard authorized modes of conduct. These measures are being taken alongside sensitization programmes, investigation and prosecution of cases and the punishment of the culprits. The setting up of the National Human Rights Commission and the National Unity and Reconciliation Commission will further improve the situation.

20. In addition to, and partly because of these measures, the Government has adopted a policy of attracting people away from rebel elements and gathering them in grouped settlements where they enjoy government protection from raids from extremist Interahamwe and infiltrators. These developments reflect a change in the Rwandan Patriotic Army's (RPA) approach. Indiscriminate firing on inhabitants and causing deaths of non-combatant civilians is being replaced by a policy of persuasion and the provision of material assistance in collective resettlement camps. The Special Representative during his last visit not only received detailed explanations on these matters, but actually travelled to the north-western prefecture of Ruhengeri where he visited the areas where the Government is attempting to provide for citizens who formerly hid in the forest in fear of both the government army and the rebels.

21. Of particular relevance in this respect is the reactivation, by virtue of Security Council resolution 1161 (1998) of 9 April 1998, of the International Commission of Inquiry, which has, among other objectives, "(a) to collect information and investigate reports relating to the sale, supply and shipment of arms and related *matériel* to former Rwandan government forces and militias in the Great Lakes region of central Africa, in violation of Security Council resolutions 918 (1994), 997 (1995) and 1011 (1995); (b) to identify parties aiding and abetting the illegal sale to, or acquisition of arms by, former Rwandan government forces and militias, contrary to the resolutions ...".

22. In its final report, submitted to the Security Council by the Secretary-General on 18 November 1998 (S/1998/1096, annex), the International Commission of Inquiry concluded:

> "The situation in the Great Lakes region is rapidly heading towards a catastrophe of incalculable consequences which requires urgent, comprehensive and decisive measures on the part of the international community. The danger of the repetition of a tragedy comparable to the Rwandan genocide of 1994, but on a subregional scale, cannot be ruled out" (para. 82).
>
> "During the past three years, the former Rwandan government forces and militia have achieved an extraordinary transformation of their position. In late 1994 the former Rwandan government forces and militia,

having been violently expelled from Rwanda by the victorious RPF [Rwandan Patriotic Front], were in serious disarray, and stood revealed as the perpetrators of a terrible genocide against unarmed civilians ... and ... remained an international pariah" (para. 84).

"... However, the changing alliances in and around the Democratic Republic of the Congo have unexpectedly worked to the advantage of the former Rwandan government forces" (para. 86).

"Persistent reports ... attest to this transformation: that the ex-FAR and Interahamwe ... have now become a significant component of the international alliance against the Congolese rebels and their presumed sponsors, Rwanda and Uganda. The Commission is convinced that the ex-FAR and Interahamwe have continued to receive arms and ammunition, both through their close links with other armed groups in Angola, Burundi, Uganda and elsewhere, and most recently, from the Government of the Democratic Republic of the Congo .... The ex-FAR and Interahamwe have now become in effect the allies of the Government of the Democratic Republic of the Congo and its allies, the Governments of Angola, Chad, Namibia and Zimbabwe. The new relationship has conferred a form of legitimacy on the Interahamwe and the ex-FAR. This is a profoundly shocking state of affairs" (para. 87).

"The free flow of arms into and within Africa is a major long-term cause of insecurity and instability in the central African subregion. It is fuelled by the presence of a multitude of rebel groups in the Great Lakes region who enjoy a large measure of governmental support" (para. 88).

"... This destructive process has been hastened by the close links that have been established among the armed groups, the armies of losers, which proliferate throughout central Africa, and of which the former Rwandan government forces are the most violent, well armed, well organized and dangerous" (para. 91).

23. The Special Representative calls attention to the complex political, economic, geopolitical and extraregional interests involved in the situation, including the illicit extraction, sale, supply and transborder shipment of minerals and other natural resources from the Democratic Republic of the Congo. The Special Representative therefore fully supports efforts at the level of the Security Council of the United Nations, the Organization of African Unity (OAU) and the Southern African Development Community (SADC) to resolve the conflicts in the Great Lakes region and to curtail the illegal traffic in arms, minerals and other resources that feeds into these conflicts.

24. Another cluster of human rights issues related to the security situation is that of the grouped settlements in the north-west of Rwanda. With the massive return of refugees, many people found their houses occupied by others. Reports from both international and local sources indicate that the Government has been endeavouring to ensure that all houses so occupied are returned to their rightful owners and that, by the end of 1998, 90 per cent of such houses had been returned. The Special Representative commends the Government's determined efforts to ensure respect for the property rights of returnees.

The critical issue of access to land, however, creates special problems that the Government is giving attention to. The many problems faced by women as a result of the genocide are complicated by the fact that those who have lost their husbands are not entitled to inherit their property, even as they are burdened with the need to support their surviving children and in-laws. The Special Representative welcomes measures being considered to alleviate the plight of widows and other affected women, in particular the draft Bill on Matrimonial Property and Succession.

25. The Government of Rwanda has been regrouping rural populations of the north-west in grouped settlements, as opposed to the traditional patterns of scattered settlements which leave the people exposed to the action of the rebel groups, while making difficult their access to services such as public education and health, electricity and water. Such a policy may be viewed as serving the strategic military interests of the Government and it is strongly reminiscent of the villagization and strategic hamlet policies which have been criticized in other countries, especially for their coercive character. At the same time, the Rwandan authorities maintain that such settlements are more conducive to development than the traditional patterns. There are reports of coercion to join these settlements, though others maintain that the people join of their own free will and that in any case they remain within their own communes. The reality is probably a mixture of the two.

26. The proper functioning of these group settlements will require considerable investments in resources for the supply of water, electricity, education and health services. Rwanda obviously does not have the necessary financial means to provide these resources. It is therefore necessary that the international community supplement Rwanda's efforts. Thus, it is in the interest of the Government of Rwanda that there be no perception of coercion in the implementation of this programme. In this respect the Special Representative commends the great efforts made singly and jointly by United Nations agencies, bilateral donors, the ICRC and NGOs to assist Rwanda in solving the problems linked to the reintegration of repatriates. He notes with satisfaction the existence of the Joint Reintegration Programming Unit pooling together the relevant resources of UNDP, UNHCR and WFP.

D. Detention, the penitentiary system and human rights

27. The situation of the judicial system is intimately linked with that of the penitentiary system and the lack of capacity to deal with criminal cases expeditiously therefore has serious human rights implications for the many persons in detention. The Government estimates that there are 10,000 persons in detention without a satisfactory case file, a number which has not been significantly reduced in the last months of 1998. In January 1998 the Government prolonged the deadline for the release of persons without case files to 31 December 1999.

28. At the end of 1998 the total number of persons in detention was estimated to be just under 125,000, which represents a slight decrease from the estimated 130,000 at the end of 1997. In the last several months the numbers have stabilized and even declined slightly after a period of steady growth in the beginning of 1998 up to a total of 130,000. According to the

ICRC in Kigali, there have been marginally more releases than new arrests since the spring of 1998, which accounts for the decrease in the total detainee population.

29. The number of persons in the communal detention centres *(cachots)* was around 36,000 at the end of the year, compared with an estimated of 40,000 in September 1998 and to a high of around 50,000 at the end of 1997. It is still considered to be decreasing as a result of the factors mentioned above, but also as a result of an increase in the number of transferrals of detainees to the prisons. By comparison, the number of detainees in the prisons, which stood at 70,000 at the end of 1997, had risen to more than 84,000 by September 1998 and was estimated by the ICRC to be at a minimum of 85,000 by the end of 1998. According to UNICEF, 4,500 of these are minors, compared with around 1,500 at the beginning of the year.

30. The conditions of detention remain deplorable in Rwanda. The prisons and *cachots* are still terribly overcrowded, but while the last year has seen some improvement in the *cachots*, overcrowding in the prisons has worsened. The sanitary conditions are still dreadful, and recently led to a typhus epidemic which caused the deaths of 45 persons in October and November in Rilima prison and required the treatment of 800 persons to bring it under control. The great killers in the prisons, however, are AIDS, tuberculosis, and sometimes malaria, the last particularly in relation to returnees from lowlands in the United Republic of Tanzania. While regular food is not provided in the *cachots*, the almost 86,000 detainees in the prisons under the Ministry of Justice alone cost Rwanda 2 per cent of its national budget.

31. The Special Rapporteur urges the Rwandan authorities to press on with the establishment of the National Human Rights Commission and urges both the Government of Rwanda and the international community to provide the National Commission with the necessary means to monitor effectively the conditions of detention in the prisons, the *cachots* and the military camps.

E. The judicial system and human rights

32. The functioning of the post-genocide judicial system continues to pose a major challenge to the Government of Rwanda, considering the atrociousness and complexity of the crimes it has to cope with, the number of accused persons and the paucity of the resources at its disposal. The Special Representative commends the authorities for having re-established a functioning judicial system in spite of the fact that its staff at all levels was reduced dramatically as a result of the genocide. Even if this had not been the case, the overwhelming size of the caseload would be beyond the ability of almost any judicial system to deal with within a reasonable time-frame. It remains the case, however, that the two human rights requirements of ensuring a fair trial as well as a speedy one, both of which are required by the international conventions ratified by Rwanda, appear to be in conflict with each other. Furthermore, the aim of re-establishing the rule of law in Rwanda is inseparably linked with the need to ensure that justice is both done and is seen to be done, with respect for the human rights of both the surviving victims of the genocide and of those accused of having committed it.

33. As in all other areas, the absence of a monitoring agency makes it difficult to register problems and record progress in the state of the judicial system, and as a consequence to assess the institutional needs at various levels. The following figures derive from government sources, if available, as well as from information provided by domestic and international agencies, organizations and observers. The Special Representative wishes to emphasize that it is in the interest of the Government of Rwanda itself to carry out a continuing survey and assessment of judicial needs, functions which would naturally fall within the scope of work of a National Human Rights Commission.

34. General progress in all areas of the justice sector has been recorded throughout 1998. The genocide trials are progressing in all prefectures, and between January and August 330 persons were tried at the Specialized Chambers of the First Instance Tribunals, as many as in all of 1997. In the last five months of 1998 around 500 persons were tried, an increase which is mainly due to the introduction of group trials, bringing the total number for 1998 up to just over 800 persons, from a total of more than 140 case files. Still, the total number of persons tried by the First Instance Tribunals remains at only around 1,000, which illustrates the immense problems with which the system is faced. 7/

35. The accused are most often assisted by an advocate and, when one is not available, they can easily obtain postponement of the hearing. The requirement that the accused be given at least eight days to prepare his defence is increasingly respected, but this period may still be too short for newly appointed defence counsels to familiarize themselves with bulky case files.

36. At the moment there are around 18 expatriate lawyers working for Avocats sans Frontières (ASF). The national Bar Association of Rwanda now comprises about 60 members, representing a doubling of the number in the last year due to the inclusion of new graduates from the University of Butare. A relatively new improvement, according to the Chairman of the Bar Association, is that a growing number of Rwandan lawyers are now accepting defence cases in the genocide trials on behalf of those accused. Some of this improvement can be attributed to a better understanding among members of the public that even those accused of genocide have the right to legal defence. Finally, a primary incentive is financial, insofar as ASF funds the work of Rwandans as well as that of their own expatriate lawyers. The Special Representative welcomes this improvement, since the availability of legal counsel is essential to the process of fair trials, and encourages all parties to contribute funds which help in providing legal defence in the genocide trials.

37. The civil parties claiming compensation in the trials are also assisted by legal counsel. A major problem, however, is that although compensation to civil claimants may be and has been awarded by the courts, the person against whom the claim has been filed will often be insolvent or unable to pay for other reasons. Also, in cases where the accused dies before or during the trial, problems arise as to whether a civil case may then be initiated against him and/or his heirs. The Special Representative notes with concern that victims of genocide must have the opportunity of redress, for the sake of justice as well as of reconciliation.

38. In general the judges of the First Instance Tribunals are reported to be more professional in their attitude, improving with practice and thereby compensating for their limited legal background, by considering the evidence impartially and by taking into account the interventions of both the prosecution and the defence. To some extent this improvement can be attributed to the influence of skilled professional counsel acting for the defence.

39. However, many problems still exist in the judiciary, most resulting from a lack of material and qualified human resources, but also from a lack of infrastructure such as transport for witnesses and accused to and from court. Most judges, magistrates and prosecutors have received only minimal training, illustrated by the fact that only around 2 per cent, or 15 out of 800, of the magistrates have a law degree, 8/ while most of the rest have received only three or six months of training.

40. One problem which is, and will probably continue to be intractable is that of the low salaries paid to members of the judiciary, as is the case for all civil servants in Rwanda. Low salaries are typically seen as an invitation to corruption and a denigration of the status of the judiciary in the eyes of the public, and a challenge to the integrity of the judicial system. The Special Representative notes this problem with concern, and urges that measures be taken to remedy it, including the possibility of topping up judicial salaries. Finally, any interference in the independence of the judiciary, particularly from the administrative organs of the State, should be resisted.

41. A new practice has been to try persons who were allegedly implicated in the same incidents in larger groups. The first of these trials was initiated on 27 February and concluded on 5 June 1998 at the Court of First Instance in Byumba, where 51 persons were tried together. During 1998 a total of more than 700 persons have been tried in groups. 9/ While group trials do not necessarily hasten the trial process as such, they help to reduce the numbers awaiting trial and may assist the better determination of individual responsibilities within the group.

42. The use of the confession and guilty plea procedure was hailed as a success after having resulted in some 7,000 confessions by September 1998. But in the last months of the year there was relatively little increase, so that the number of persons seeking to avail themselves of this opportunity now stands at about 9,000 of whom around 3,500 have been able to do so. 10/ Nevertheless, one must regret the fact that many of those who have confessed still remain in detention, in the midst of the other accused. A further consequence is that persons who plead guilty tend to implicate others, which leads to an increased burden on the investigators and prosecutors and results in more detentions. On the other hand, the testimony of those confessing may also assist the prosecution by contributing to the closure of other case files. In an example from Rilima prison in November 1998, the statements of 120 persons utilizing the confession guilty plea procedure led to the closure of more than 700 case files. 11/

43. The so-called Mobile Groups, which have replaced the earlier *Commissions de Triage*, are made up of Judicial Police officers (OPJ) and Judicial Police

inspectors (IPJ) charged to examine case files and make recommendations as to their disposition. They became effective with the training and deployment of 400 IPJs in 1998, which has also had a positive effect on the facilitation of the trial itself. Still, there is a need for further and ongoing training at this level, for instance in human rights issues, investigation methodology, and for material assistance such as support to communications and transport.

44. Linked to these mechanisms is the decision to release conditionally, after investigation, those detainees against whom it has not proved possible to file charges. A first batch of 76 persons was released in early December 1998 at Rilima commune in Nyamata prefecture. All in all, about 1,000 people were released towards the end of 1998, which is still far from fulfilling a promise given by the former Minister of Justice to release 10,000 persons by the end of the year. Nevertheless, the Special Representative warmly commends this initiative as well as the campaign of sensitization aimed at the population to avoid reprisals against the beneficiaries of this release programme, which is a significant step towards reconciliation.

45. These positive developments at the judicial level serve to reduce the number of persons in detention awaiting trial and also, in the long run, the number of post-trial detainees. They contribute to the strengthening of the rule of law in Rwanda, to reducing human suffering and the exclusion of persons from the normal bounds of society, and ultimately support the process of reconciliation. They are warmly welcomed by the Special Representative. Every effort should be made to ensure that the genocide trials before the tribunals are carried out as effectively and with as much professionalism as possible.

46. Observers report more rigour as well as more respect of the rights of the accused in the military justice system, together with greater recourse to heavier sentences, including the death penalty. The responsibility of investigating and prosecuting crimes committed by members of the armed forces, including 1,600 ex-FAR genocide cases, belongs to the *Auditorat militaire*, its Department of Military Prosecution and Investigation and its two military courts, one for soldiers and junior officers and the other for senior officers and appeals. The military authorities recognize that a good number of human rights and humanitarian law violations have been committed by members of the RPA which they attribute to a spirit of revenge among some members of the armed forces. The combination of sensitization, information, prosecution and punishment of a number of cases may have contributed to a decline in the number of violations by the military. The Special Representative strongly supports the efforts of the *Auditorat militaire* to prevent and punish violations of human rights and humanitarian law by the military and urges the international community to provide the material and technical assistance needed to continue and expand this work.

47. The Special Representative welcomes the apparent moratorium on public executions since the first series of such executions and the international outcry they provoked. He strongly recommends that the Government of Rwanda commute the death sentences to life imprisonment, for the sake of both human rights principles and the requirements of reconciliation.

48. In view of the burden placed on the domestic judicial system, the Special Representative welcomes the efforts made by the Government of Rwanda to look into the possibility of restructuring the procedure for processing the genocide cases. One of the avenues for this debate is the so-called Saturday Talks, initiated and led by the President of the Republic and involving representatives of all sectors of Government and members of civil society, including the genocide survivors. This informal forum focuses on major issues of concern to the nation, including not only the administration of justice and the detention systems, but also the economy, democracy, diplomacy and others.

49. Among the key subjects presently being discussed there is the search for alternative means of justice and reconciliation, and a subcommission has been appointed to study the *gacaca* and its applicability to genocide trials. According to government sources, detailed proposals will be presented to the Parliament and the public in the near future. These would involve transferring genocide cases falling within categories 3 and 4, and possibly also 2, 12/ to this local communal level of traditional justice, where locally elected and respected members of the community would preside over cases involving other members charged with these offences.

50. On the one hand the *gacaca* could be seen as an instrument of reconciliation, a means of sensitizing the people to the issues, an effective instrument of social cohesion, a form of consensual justice which brings the people together. The objective today would therefore be to bring the people to participate in the process of administration of justice with a view to facilitating the task of reconciliation, as well as alleviating the burden on the judicial system. The question of compensation to victims may be particularly appropriate to such forums.

51. It is, however, essential to bear in mind that the *gacaca* has traditionally been used essentially to resolve disputes and cases involving offences such as cattle rustling, and are seen more as a mechanism for dispute settlement than of criminal justice. Its application to such highly complex and emotionally charged cases as genocide would require the utmost care to safeguard the human rights of all concerned. This would include ensuring the fairness, integrity and impartiality of the tribunal members, particularly in relation to persons charged with crimes falling in category 2, who are liable to receive a prison sentence of life or, in cases where a confession has been made, between 12 and 15 years. 13/ The question of legal defence before the *gacaca* would also have to be considered. Attention must also be drawn to the fact that in 1996 a study carried out by national experts under the auspices of the Office of the High Commissioner for Human Rights stated that the *gacaca* is not competent to hear crimes against humanity, but it could be utilized for purposes of testifying in connection with reconciliation. 14/

52. Finally, apart from the logistical and administrative implications for the transfer of files, scheduling of sessions, election of members and sensitization of the population to this procedure, it would necessitate amendments to the Organic Law, as well as to the Penal Code and other laws of Rwanda. There should be no constitutional infringement and adherence to international treaties ratified by Rwanda must be respected.

F. The economic and social conditions

53. Rwanda is among the most densely populated countries in the world and also one of the poorest, with a predominantly agricultural economy which even before the genocide could not sufficiently feed its population. Some have argued that the struggle for extremely scarce resources partly contributed to ethnic strife and genocide in Rwanda, and continues to undermine any prospect of reconciliation. From this point of view, economic growth is central to any strategy to develop a culture of human rights, tolerance and amity between ethnic groups in Rwanda. The Special Representative therefore urges the international community to aid the Government of Rwanda in its efforts to promote economic development.

54. There is a pressing need to create the conditions of peace, justice and reconciliation which will enable Rwanda to exploit its natural resources for the well-being of its people. These resources include a substantial natural gas reserve under Lake Kivu. The region of the north-western prefectures of Gisenyi and Ruhengeri has such extraordinary agricultural potential that it has been described as the "breadbasket" of Rwanda. Unfortunately, until recently, this has been the area most badly affected by fighting between government troops and the armed rebel forces.

55. Another area of importance is that of providing appropriate fiscal incentives for sustainable development. Rwanda would also benefit enormously from an effective system of free public education to develop the educated and enlightened society that it needs, and a free public health service to produce the requisite healthy manpower. At the moment, there is no free education system at either primary or secondary level, in contrast to most other countries in Africa and the rest of the world. This explains in part both the low level of literacy in the country (52.7 per cent overall, 51.6 per cent for men and 44.8 per cent for women) 15/ and perhaps also the much discussed ease with which the masses can be manipulated by their leaders. Likewise, there is no free health care in Rwanda.

1. The rights of women

56. The situation of women is of particular concern, especially in the post-genocide period. Many were sexually abused and grievously injured, or even killed. Of those who survived many contracted AIDS from rape, others lost their husbands and are now single parents with many children, sometimes rejected by their in-laws, having to support these children without any means. Particularly unfair to women is the custom that they traditionally do not have the right to inherit their husbands' property. Instead, they can only act as guardians for their children while the latter are still minors. Even those who had managed to flee into exile with their husbands cannot live at home when they return to Rwanda, and are effectively deprived of the necessities of life.

57. This means, therefore, that women are in the same situation of loneliness and helplessness, whether they are widows of genocide victims or wives of detainees accused of participation in the genocide. They are assisted to the extent possible by voluntary organizations, whose work must be commended. The Special Representative welcomes the decision of the International Tribunal for Rwanda to give a broad definition to acts of sexual violence and that of the Government of Rwanda to upgrade the crime of rape

from category 4 to category 1. 16/ The Special Representative, likewise, supports the proposal of the Government of Rwanda to grant women legal access to their husband's property, in particular through the proposed Law on Matrimonial Property and Succession.

2. The rights of children

58. The plight of children in post-genocide Rwanda is equally alarming. The lack of free public education even at the primary level has been indicated above. Children have also suffered immeasurably from the genocide, many lost their parents, grandparents and other adult relatives, and the result is that small children are wandering helplessly on the streets especially in the towns in the north-west.

59. Sadly, during the genocide some children were also forced to participate in the killings, and many are presently in detention pending trial, while others have already been tried and, in some cases, been reintegrated into their communities of origin. The Special Representative commends the programmes of the Government and of international organizations aimed at addressing their special psychological and physical needs, and urges that all actions affecting them be guided by a concern for the interests of the child, as specified under the Convention on the Rights of the Child.

G. International cooperation and human rights

60. The importance of international cooperation in the development of the rule of law and a human rights culture in Rwanda cannot be overstated. The view of the Government of Rwanda on the matter is best summarized in the following words of a Rwandan judicial official: "We have received severe criticisms from some parts of the international community, but we are doing what we can. Rather than criticizing, why don't you join us and augment our efforts?"

61. The adverse effects of the Rwandan economic weakness in relation to the conditions of incarcerated persons and the judicial system have been discussed above. There are indications that after four years of providing aid to Rwanda, the international community, and in particular some donor countries, are beginning to experience fatigue, becoming less and less enthusiastic to provide more aid. However, Rwanda should not be treated as if it were an ordinary country, but rather as one which has gone through the traumatic experience of a genocide. It deserves assistance to develop a comprehensive long-term (perhaps 10-year) plan for rehabilitation and development. The Special Representative urges the international community to adopt a comprehensive long-term approach to providing technical and financial assistance to Rwanda, through the United Nations-sponsored process of thematic consultations.

62. Technical assistance from the international community is vital for Rwanda to meet the challenge of the post-genocide situation. It must also be understood that if it is to be effective, technical assistance cannot be imposed on Rwanda. For Rwanda to have a chance to meet the challenge of the post-genocide situation, technical assistance from the international community

is vital. For this assistance to be effective, continuing consultations with the leadership as well as with the civil society of Rwanda is indispensable prior to the funding of any development programmes.

63. The Special Representative noted during his fact-finding missions that almost all Rwandan interlocutors emphasized the need for material assistance instead of or in addition to the technical expertise, which they said was often available locally. In some cases, it was often suggested that the expertise, savoir-faire and experience of local experts were better adapted to the needs of the society, as well as less costly.

64. The most commonly recommended form of technical assistance, however, is training, which is required in all aspects of professional activity, and particularly in the judicial domain. Already, some efforts have been made in relation to training activities and capacity-building, but much more is still needed. There is need in particular for systematic planning of long-term training needs in human rights, including training of trainers, dissemination of information, the role of the media, education, awareness-raising and sensitization, advocacy, monitoring, etc. For the judicial and penitentiary systems, this includes the continuous training of staff at all levels. More specifically, there is a need to expand legal and magistrate education in Rwanda to a much larger pool of candidates than is presently the case. These training needs apply as well to the military justice system.

65. Another type of assistance which is badly needed according to Rwandan interlocutors is the provision of material means for the development of the rule of law and of a culture of human rights. The needs are very diverse, including basic office equipment, communications devices, and other forms of logistical support. Vehicles are essential in the judicial field. Assistance is particularly needed to raise the salaries of judges and magistrates. The Government had benefited from a fund to provide bonuses to legal staff, but apparently these funds have been exhausted. The international community should therefore consider ways of helping to enhance the remunerations of judicial employees. Finally, the promotion and dissemination of human rights principles will also require the training of journalists and other media specialists

66. Rwanda is a traumatized society. There are many who need professional help which is for the moment only available abroad. The assistance of the international community is needed in this area to facilitate access to trauma treatment, as well as for training, financing and equipping local providers of care to trauma victims.

III. CONCLUSIONS AND RECOMMENDATIONS

67. The Special Representative hopes that the present report will help to identify issues and problems in promoting the development of the rule of law and a human rights culture in Rwanda and make possible more fruitful cooperation between the Government of Rwanda and the international community in the pursuit of these objectives.

68. The Special Representative commends the contribution of the Human Rights Field Operation in Rwanda to the promotion and protection of human rights in

Rwanda and regrets that it did not prove possible for an understanding to be reached in 1998 between the Government of Rwanda and the Office of the High Commissioner for Human Rights with respect to the mandate of the Field Operation. The resulting departure of HRFOR left an important void in the human rights scene to Rwanda. It removed an important and effective source of support and information to the Special Representative during his missions to Rwanda. It also removed an important link between the Government of Rwanda and the Office of the High Commissioner for Human Rights.

69. The Special Representative considers the establishment and operation of an independent and effective National Human Rights Commission as the principal focus of his mandate. It encapsulates all three elements of that mandate. It also provides the best opportunity as well as mechanism for the resumption of collaboration between the Government of Rwanda and the Office of the High Commissioner for Human Rights. With this premise in mind, the Special Representative recalls the recommendations contained in his last report to the General Assembly (A/53/402, annex) and which are still valid, and submits the following recommendations in conformity with his mandate.

70. The Special Representative warmly welcomes the adoption by the National Assembly of Rwanda on 19 January 1999 of the law creating the National Human Rights Commission and urges its speedy approval by the Constitutional Court. The Special Representative equally welcomes the firm intention conveyed to him by the Government and by the Bureau of the National Assembly that the process of appointment of the seven members of the Commission will be completed as a matter of urgency and hopefully before the end of February 1999. The Special Representative fully supports the determination of the National Assembly to designate, among the list of names submitted by the Government, the most qualified candidates as member of the Commission on the basis of competence, dedication, independence and integrity.

71. The Special Representative urges the newly appointed members of the National Human Rights Commission to convene and organize at the earliest possible opportunity, in collaboration with the competent authorities, members of the National Assembly and of the judiciary, members of the civil society, regional and international human rights experts and related associations, the Office of the High Commissioner for Human Rights, the Special Representative, other relevant entities of the United Nations system and other interested parties, a broad round table on human rights focusing on how best to make the Commission independent and effective. The round table should in particular assist the members of the Commission in determining how best they can meet their immediate and long-term objectives and in identifying the financial and technical assistance required to enable the Commission to function effectively and independently.

72. The Special Representative encourages the Government of Rwanda and the Office of the High Commissioner for Human Rights, in the light of their convergence of views and common interest in cooperation on human rights, to enter negotiations aimed at elaborating a practical long-term plan of collaboration in technical and material assistance on human rights in Rwanda with special reference to the work of the National Human Rights Commission.

73. The Special Representative wishes to stress that the National Human Rights Commission, once established, must be given the mandate and the resources also to supervise the situation in the detention and justice systems.

74. The Special Representative urges bilateral and multilateral donors likewise to enter into negotiations with the Government of Rwanda with a view to systematic, long-term technical and material assistance to the promotion of human rights in Rwanda.

75. The Special Representative encourages the Office of the High Commissioner for Human Rights and the rest of the international community to consider favourably requests for collaboration and assistance from the Government of Rwanda for support to the National Unity and Reconciliation Commission.

76. The conditions of detention remain deplorable in Rwanda. The Special Representative is aware that the care and maintenance of the detainees constitutes a heavy burden for the naticnal budget of Rwanda, in spite of the considerable contribution of the International Committee of the Red Cross. The Special Representative commends the Government of Rwanda for its creative efforts to hasten the reduction of the caseload. In this respect, the Special Representative encourages the Government of Rwanda to persevere in these efforts and to ensure that all such measures are in conformity with established human rights standards.

77. In the light of the serious situation in the detention centres, the Special Representative recommends that everything be done to ensure compliance with the requirement that persons in detention are treated in a manner which respects their fundamental right to be free from cruel, inhuman or degrading punishment and treatment. Along these lines, serious consideration should be given to releasing, on humanitarian grounds, the sick and the elderly, minors and children for whom alternatives to imprisonment can be found, and those identified as having case files belonging to the lower categories according to the Organic Law, where the length of their pre-trial detention exceeds that of the sentence they are likely to receive.

78. The Special Representative furthermore recommends that a long-term strategy for the use of prison sentences be considered, taking into consideration any changes made in the judicial process. This should be done in order to ensure that an estimate of future needs in this area can be made to ensure that those serving long or life imprisonment can do so under satisfactory conditions.

79. The judicial system of Rwanda was for all practical purposes destroyed by the genocide. The Government has by all accounts done a remarkable job in setting up a working justice system since it took power. It is still quite far, however, from having the capacity to handle the enormous caseload of persons accused of genocide under the Organic Law. The Special Representative commends the international community for the valuable assistance it is giving to the judicial system of Rwanda and urges it to expand and systematize its assistance, including collaboration with the Office of the Military Prosecutor General, to help the country meet its enormous judicial challenges.

80. The Special Representative recommends that the Government of Rwanda, as well as its international partners, continue to strengthen the prosecution and judicial levels of the justice system. This should be done by upgrading the skills and qualifications of their members, and by ensuring that material needs are fulfilled in order for them to be able to work effectively. The Special Representative furthermore wishes to stress that a solution must be found to ensure that members of the judiciary are sufficiently paid, either by topping up their wages or by providing other support in the form of housing, transport, etc., to ensure that respect for their integrity is maintained. Finally, attention should be paid to ensuring that no form of interference in the independence of the judiciary occurs.

81. The Special Representative stresses the importance of ensuring that legal aid is provided to both civil and criminal parties, and that compensation is paid to victims of the genocide in accordance with the decisions of the courts. To this effect, funds should be contributed and managed in cooperation between Rwandese and international partners.

82. In relation to the International Tribunal in Arusha, the Special Representative recommends that everything be done to ensure a close relationship with the domestic courts as well as with the population of Rwanda, so that the international process is seen as contributing to the widest possible extent to the eradication of impunity in the country.

83. The Special Representative commends the efforts of the Rwandan Government in trying constructively to identify and implement viable alternatives to the current processing of the genocide cases, particularly in relation to ensuring popular participation and involvement. In relation to considerations on the reintroduction of the *gacaca*, the Special Representative suggests that a workshop be convened with national, African and other international experts in this field, to try to achieve the best possible solutions taking all these considerations into account.

84. The Special Representative takes note with satisfaction of the expressed determination of the Government of Rwanda to promote the development of a culture of human rights in the country. In light of the close relationship between development and such a culture, the Special Representative strongly recommends to the Government of Rwanda to promote as well the advent of a culture of economic growth and development. The Special Representative, in the same regard, urges the Government of Rwanda to give serious consideration to measures leading to the establishment of a system of free public education, at the very least at primary level, as well as a system of free public health. The Special Representative urges the international community to consider favourably government proposals aimed at achieving these objectives.

85. The Special Representative recommends renewed efforts to alleviate the plight of survivors of the genocide, with special attention to the very severe problems of women and children. In particular, the Special Representative supports the decision of the Government of Rwanda to upgrade the crime of rape from category 4 to category 1 and strongly recommends adoption by the National Assembly of the Bill on Matrimonial Property and Succession. The Special Representative also strongly urges that programmes aimed at addressing the

problems of children be always guided by a concern for the interest of the child, as provided for under the Convention on the Rights of the Child.

86. The Special Representative welcomes indications that the security and human rights situation has improved in the north-west in particular and the country in general since July 1998. The Special Representative likewise welcomes measures aimed at increasing the protection given to the civilian population of the north-west. While understanding the beneficial economic and security advantages of the group settlement pattern currently being implemented in the north-west, the Special Representative urges the Government of Rwanda to minimize the use of coercion and maximize planning, grass-roots consultations and the prior availability of services in the implementation of such schemes. The Special Representative encourages the international community to continue and expand assistance programmes aimed at improving the material condition of the affected populations.

87. The Special Representative commends the efforts of the Government of Rwanda to ensure that abandoned property that was occupied by others is promptly returned to its rightful owners after their return. Given the importance of this policy for the prospects of national reconciliation, the Special Representative commends the Government of Rwanda for its policy on the return of occupied property and encourages it to continue in this direction.

88. The Special Representative encourages the Government of Rwanda to do its utmost to minimize any element of coercion in the implementation of the grouped habitat policy. The Special Representative exhorts the international community to continue and expand its assistance to Rwanda in the housing field.

89. The Special Representative welcomes indications that the level of fear has declined in Rwandan society in the last half-year. The Special Representative welcomes further measures aimed at eliminating the fear remaining in Rwanda. This can only be fully achieved when the rule of law is well entrenched in the country. In this respect, the Special Representative encourages measures being undertaken to achieve participatory democracy, in particular the election of representatives of women at all levels.

90. The Special Representative calls the attention of the international community to the close linkage existing between the crisis in the Democratic Republic of the Congo, the security situation in the north-west of Rwanda and the human rights situation in the country. Of special importance in this respect is the final report submitted through the Secretary-General to the Security Council by the International Commission of Inquiry on the sale, supply and shipment of arms and related *matériel* in the Great Lakes region of Central Africa. The Special Representative urges the international community, including not only the Security Council but also the relevant African regional and subregional organizations, as well as influential regional and extraregional Governments, to do their utmost to promote peaceful resolution of the conflict in the Democratic Republic of the Congo.

91. In the light of the above recommendations, the Special Representative urges the international community to adopt a comprehensive and systematic approach to providing financial and technical assistance to Rwanda, bearing in

mind both the requirements of long-term development and the fact that the country has experienced a genocide combined with a continuing determination by the perpetrators to pursue their efforts at extermination. Achieving the appropriate approach requires close consultation with all elements of Rwandan society.

Notes

1/ First from 7 to 21 December 1998 to follow up on developments, then on 4 January 1999 to prepare the Special Representative's own 11-23 January 1999 mission and to assist him therein.

2/ These included the President of the National Assembly and members of the Bureau of the Assembly, the Prime Minister, the Minister for Foreign Affairs, the Minister in the Office of the President, the Minister of Gender, Family and Social Affairs, the Minister of Youth, Sports, Culture and Vocational Training, the Chairman of the Commission on National Unity and Human Rights of the National Assembly and members of the Bureau of the Commission, the President of the Supreme Court, the Prosecutor General of the Supreme Court, the Military Prosecutor General, the Adviser to the Vice-President of the Republic, the Secretary-General in the Prime Minister's Office and its Chief of Administrative, Legal, Political and External Relations Affairs, the Secretary-General in the Ministry of Justice, the Secretary-General in the Ministry of Information, the Deputy Director of the Judicial Police and the Prosecutor of the Republic for the Prefectures of Kigali Ville and Kigali Rural. Meetings were held as well with representatives of United Nations agencies and organizations, including the International Tribunal for Rwanda (ITR), with the Chief and the Deputy Chief of Delegation of the International Committee of the Red Cross (ICRC), and with the representatives of the *Association rwandaise des travailleurs chrétiens - Section feminine* (ARTCF), the *Ligue Rwandaise pour la promotion et la défense des droits de l'homme* (LIPRODHOR), the *Collectif des ligues et associations de défense des droits de l'homme au rwanda* (CLADHO), the *Association pour la défense des droits de la personne et des libertés publiques* (ADL), the *Association rwandaise pour la défense des droits de l'homme* (ARDHO), *Pro-Femmes*, and *Avocats sans frontières* (ASF).

3/ The plan called for (i) the training of national human rights monitors; (ii) human rights education programmes in both formal and informal education; (iii) providing the National Commission for Human Rights with the necessary financial and technical assistance; (iv) initiating a human rights public awareness campaign using media resources; (v) establishing a national centre for human rights as an information clearing house and training centre.

4/ United Nations Human Rights Field Operation in Rwanda, an internal review, October 1997. The activities concerned included training for judicial, administrative and military authorities, provision of material and logistical support to judicial authorities, as well as awareness campaigns, selection and training of government officials within ministries to act as

"human rights focal points", capacity-building for non-governmental organizations, and training initiatives with a focus on social and economic rights. HRFOR was indeed an important donor-assistance implementing agency.

5/ Major-General Kagame, "EU should make distinction of interests", *The New Times* (Kigali), 18-24 January 1999, pp. 1-2.

6/ David Shearer, Contextual Study: Democratic Republic of the Congo 1998 (Policy, Advocacy and Information Division, Office for the Coordination of Humanitarian Affairs, United Nations, New York, July 1998), p. 30.

7/ Office of the General Prosecutor, Kigali; Centre de Documentation et d'Information sur le Procès de Génocide, project managed by the Ligue rwandaise pour la promotion et la défense des droits de l'homme (LIPHRODOR).

8/ According to the President of the Supreme Court of Rwanda.

9/ Office of the Prosecutor General, Kigali.

10/ Ibid.

11/ Coordinator of the European Union Programme of Assistance to the Judiciary in Rwanda.

12/ According to the Organic Law of 30 August 1996.

13/ Sections 14 and 16 of the Organic Law of 1996.

14/ United Nations High Commissioner for Human Rights Field Operation in Rwanda. Gacaca. Le droit coutumier au Rwanda. Rapport final de la première phase d'enquête sur le terrain, 31 January 1996, section 2.3.2, p. 10.

15/ Ibid., p. 7.

16/ Interview.

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Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Rwanda

Note by the secretariat

1. At its fifty-fourth session, the Commission on Human Rights, in its resolution 1998/69, requested the High Commissioner to submit to it, at its fifty-fifth session, a report on the work of the Human Rights Field Operation in Rwanda.

2. In view of the fact that the Human Rights Field Operation in Rwanda had to close in July 1998, the attention of the Commission is drawn to the report of the High Commissioner to the General Assembly on the Human Rights Operation in Rwanda (A/53/402, annex), which is available to the Commission at its present session.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Situation of human rights in Myanmar

Report of the Special Rapporteur, Mr. Rajsoomer Lallah, submitted in accordance with Commission on Human Rights resolution 1998/63

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GE.99-10333 (E)

Introduction

1. The present report is submitted pursuant to paragraph 5 of Commission on Human Rights resolution 1998/63, adopted without vote on 21 April 1998, in which the Commission on Human Rights requested the Special Rapporteur to submit a report at its fifty-fifth session.

I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

2. The Special Rapporteur wishes to recall that, since his appointment in June 1996, he has yet to be allowed by the Government of Myanmar to see the situation on the ground, despite the repeated requests of the General Assembly and the Commission on Human Rights that he have direct access to the Government and people of Myanmar.

3. In the meantime, the Special Rapporteur, through his missions and consultations, has received much assistance and information from governmental, intergovernmental and non-governmental sources. He has further received information from individuals who have personal knowledge of the situation in Myanmar. He has also received several well-documented reports describing the situation in Myanmar, particularly in relation to the matters over which the General Assembly and the Commission on Human Rights have expressed concern.

4. The Special Rapporteur submitted an interim report (A/53/364, annex) to the General Assembly at its fifty-third session.

5. While at Headquarters to present his report, the Special Rapporteur met with several representatives of Governments and non-governmental organizations and also private individuals who imparted their views and information on the situation of human rights in Myanmar.

6. In his continuing effort to obtain the most accurate and up-to-date information on the situation of human rights in Myanmar, the Special Rapporteur visited Thailand in December 1996 to assess that situation in the light of information gathered from newly displaced persons from Myanmar living in refugee camps along the Thai-Myanmar border. The findings of the mission are reflected in section III of this report.

7. The present report is based upon information received by the Special Rapporteur through 31 December 1998. The report is to be read in conjunction with the Special Rapporteur's report to the General Assembly; it updates certain matters discussed before the General Assembly while treating some issues not addressed there.

II. THE EXERCISE OF CIVIL AND POLITICAL RIGHTS

A. Measures adversely affecting democratic governance

8. In his report to the fifty-first session of the General Assembly (A/51/466), the Special Rapporteur stated that the repressive political climate in Myanmar since 1990 had made it virtually impossible for opposition parties to function and they had been severely hampered through constant repression and arrests, with a number of members of Parliament in prison and

others in exile. Two years later, the Special Rapporteur continues to receive reports indicating that in Myanmar political parties in opposition continue to be subjected to intense and constant harassment by the regime with a view to restricting their activities.

9. This harassment and the arrests increased during September 1998 when 200 representatives of the National League for Democracy (NLD) and elected representatives from various constituencies and more than 650 party members were arrested by the authorities following NLD's attempts to convene a parliament comprising representatives of the country's various ethnic groups in accordance with the results of 1990 general election.

10. On 6 October 1998, the United Nations High Commissioner for Human Rights issued a press release in which she stated the following:

> "I have been following with increasing concern the intensification of repression against Myanmar's political opposition over the last few weeks. Recently, over 200 members of the National League for Democracy (NLD) have been arrested or detained, while NLD leader Aung San Suu Kyi has been subjected to repeated harassment. Further, conditions of detention in the country fall far short of international standards, and a number of prisoners are reported to have died while in custody.
>
> "It is clear from the Commission of Inquiry established by the International Labour Organization that forced labour continues in Myanmar. Meanwhile, there also appears to be an official policy of forced displacement of ethnic minorities, which has resulted in large numbers of internally displaced and refugees in neighbouring countries.
>
> "I raised these issues with the Foreign Minister of Myanmar, U Ohn Gyaw, during a meeting in New York on 23 September but received no satisfactory response. I take this opportunity to call on the Government of Myanmar to guarantee the rights of freedom of movement and association of all citizens and to accelerate the process of national reconciliation leading to the enjoyment of all human rights. I hope the people arrested or detained for political reasons will be released and allowed to express freely their views and opinion and demonstrate peacefully.
>
> "I urge the Government to establish a constructive dialogue with the United Nations system, including the human rights mechanisms, in the effective promotion and protection of human rights in the country. Regrettably, the authorities have failed to respond to consistent requests to allow the Special Rapporteur on the situation in Myanmar, Rajsoomer Lallah, to conduct a field mission. I reiterate my support for Mr. Lallah's efforts to fulfil his mandate and again request the Government to cooperate with him and allow him to have direct contacts with the people of Myanmar."

11. On 7 October 1998, one day following the High Commissioner's statement, the State Peace and Development Council (SPDC) continued its policy of restricting the legitimate activities of members of political parties by arresting 54 NLD members. According to a statement made the same day by

Myanmar authorities, the 54 persons were distributing leaflets calling for the convening of the parliament and support for the NLD. According to the authorities, these groups were also in collusion with illegal organizations within the country and abroad.

12. On the same day, the High Commissioner for Human Rights issued a second statement stating the following:

> "The latest detentions of opposition activists in Myanmar are very worrying, indicating that the Government continues to ignore basic human rights standards and the concern of the international community.
>
> "Yesterday I deplored the intensifying wave of repression against Myanmar's political opposition. I reiterate in the strongest possible terms my call to the Government of Myanmar to release all political prisoners and to guarantee its citizens all fundamental human rights. I also urge the Government to undertake a process of reconciliation with the opposition and to cooperate fully with the human rights mechanisms of the United Nations."

13. On 23 October 1998, the Chairman-Rapporteur of the Working Group on Arbitrary Detention together with the Special Rapporteur on torture of the Commission on Human Rights addressed a letter to the Minister for Foreign Affairs of Myanmar in which they referred to the specific case of Dr. U Saw Mra Aung. The letter states the following:

> "We wish to draw Your Excellency's attention to information we have received concerning the situation of Dr. U Saw Mra Aung, an 80-year-old medical doctor and an elected member of Parliament, who was allegedly arrested on 6 September 1998. In view of his old age, the source is particularly concerned about his health while in detention. It is also reported that on 7 October 1998, the State Peace and Development Council announced that 54 people had been arrested in connection with a conspiracy to 'incite unrest' by members of the National League for Democracy and students said to be allied with foreign organizations. It is alleged that some of those detained before the 7 October press conference were severely beaten during interrogation, and that they may not be receiving such medical assistance as they might require as a result."

14. On 3 December 1998, the Permanent Representative of Myanmar to the United Nations Office at Geneva responded to the letter by stating the following:

> "I have since been informed by the authorities concerned in Myanmar that the person under reference in your communication, Dr. Saw Mra Aung, was not arrested as alleged. He is comfortably accommodated at the government guest house where he is accorded due courtesy and respect. Dr. Saw Mra Aung has unlimited access to his family. On 26 October 1998 and again on 10 November 1998 he was chauffeured to his residence for overnight reunions with his family."

15. Myanmar officials claimed in numerous interviews and press statements that the elected members of Parliament and other NLD members were not arrested but were instead called for questioning and were treated as guests in government gust houses. In a news briefing held in Yangon on 22 November 1998, Lieutenant Colonel Hla Min stated that "arrangements were made for NLD party members and elected representatives from various constituencies to take up temporary residence at State guest houses in their respective areas from 6 September onwards. A total of 200 NLD representatives and 651 party members were included in these arrangements."

16. According to the same article, 63 NLD representatives and 321 party members who undertook not to participate in such "illegal activities" were returned to their homes. However, the Special Rapporteur has no information on the fate of the remaining over 400 NLD representatives and party members, their place of custody and health situation.

17. Since November 1995, when the NLD leaders withdrew from the National Convention, there has been increasing harassment of the party by the military regime, including arrests of hundreds of party members over the last six months. In December 1998, almost all of the members of the organizing committees in the states, divisions, townships, wards and villages have been taken into custody illegally for no apparent reason and they are unable to fulfil their obligations and duties. Most of these elected parliamentarians have added responsibilities as either chairman or secretary of the organizing committees in the townships. The Special Rapporteur observes that the SPDC is illegally arresting and detaining numerous members of the NLD, including elected representatives who have in no way violated any law. The Special Rapporteur further wishes to note that keeping people in so-called "guest houses" against their will or under the threat that their detention will continue unless they desist from political activities or abandon membership of the party or of their seat in Parliament is no more than a euphemism for arbitrary imprisonment in violation of article 9 of the Universal Declaration of Human Rights, as more fully elaborated in article 9 of the International Covenant on Civil and Political Rights.

18. Aside from the arbitrary arrests, NLD members have been subjected to intense and systematic harassment. It is reported that over the last six months, members of the party have been constantly intimidated by local authorities as well as by armed forces personnel. Their houses are under constant surveillance. Many members of political parties have reportedly been evicted from State-owned apartments where they had lived for many years. The harassment of the NLD and the pressure under which its members are living have led some of them to resign. Such resignations are publicized in the Government-controlled newspaper, New Light on Myanmar. As a further form of harassment, a concerted effort was made by local authorities to remove all signs of an NLD presence on main roads or at any place where they might be exposed widely to the public. As a result of all these repressive measures, virtually all the branch offices are closed.

19. The resignations of NLD members and closures of NLD offices are widely disseminated in the media, in terms that are almost identical in nature and matter except for the particulars regarding the address, department, and number of people. The following are some examples:

"It has been learned that the entire township Executive Committee [EC] and members of the National League for Democracy [NLD] party of Ponnagyun Township [in Arakan State] have resigned and the township branch of the NLD was dissolved at their own request on 16 October 1998."

Source: Rangoon TV Myanmar Network in Burmese, 1330 GMT, 11 November 1998.

"It has been learned that the Executive Committee [EC] members and all members of Minbya Township National League for Democracy [NLD] in Arakan State have tendered their resignations and dissolved the township NLD out of their own volition on 11 November 1998."

Source: Rangoon TV Myanmar Network in Burmese, 1330 GMT, 25 November 1998.

"All members of the Executive Committee [EC] of the National League for Democracy [NLD] in Kyunhla Township, Sagaing Division, have resigned of their own volition and disbanded the NLD office in Kyunhla on 27 November [1998]."

Source: Rangoon TV Myanmar Network in Burmese, 1330 GMT, 3 December 1998.

"All Executive Committee [EC] members of Mong Yawng Township National League for Democracy [NLD] in Eastern Shan State resigned from the party and the township office of the NLD was dissolved on 30 November."

Source: Rangoon Radio Myanmar in Burmese, 1330 GMT, 9 December 1998.

B. Prison conditions

20. The current Special Rapporteur has not been able to visit Myanmar. Given the fact that the former Special Rapporteur was denied access to prison cells and could not meet with any detainee while visiting Myanmar, and given the fact that the Government of Myanmar rejected the International Committee of the Red Cross (ICRC) standard requirements for visits to places of detention (i.e. that it meet prisoners in private, have access to all prisons and be assured of repeat visits), the Special Rapporteur can only rely on the complaints of former detainees such as those with whom he met while in Thailand in the course of his recent visit. The testimonies gathered from three former detainees strongly indicate that Myanmar authorities are unwilling to open their jails to public scrutiny and that prison conditions fall far below minimum international standards established by the United Nations.

21. Prisoners are said to be denied adequate food (in amount and quality) and health care, to be housed in unsanitary and degrading conditions and subjected to cruel disciplinary practices or torture.

22. Numerous allegations, often in considerable detail, have been received alleging that members of the Myanmar military, intelligence and security services and police continue to torture persons in detention or otherwise subject them to cruel, inhuman or degrading treatment and punishment. Such treatment seems to be routinely employed during the interrogation of persons who have been arbitrarily arrested. Many former political detainees testified to having been put into leg irons and beaten with canes, sometimes to the point of unconsciousness. Testimonies from reliable sources indicate that detainees are very often forced to sleep on cold cement, and that many of them suffer from sickness and serious diseases. Cells are often overcrowded and prisoners are provided with inadequate hygiene or medical care.

23. Bribery and corruption are said to be a major problem in Myanmar prisons. Although families can bring food and medicines to their relatives, such supplies are reportedly often confiscated by the prison authorities.

24. The Special Rapporteur was told that hundreds of prisoners have been forced to work under extremely harsh conditions on infrastructure projects without being released at the completion of their duties. It has also been alleged that convicts are taken from prison to serve as porters, often shortly before their sentences are to expire, and then forced to work under very poor conditions long after they should have been released from prison. Apparently, prisoners can avoid going to such camps if they pay large bribes to the prison authorities. Persons released from prison stated that during their detention they were not allowed to have any reading material, including the State-run newspaper, or material with which to write, or non-political literature; they were reportedly also denied access to radios.

III. MISSION TO THAILAND

25. The Special Rapporteur has previously addressed the situation in the ethnic minority States, especially those along the Myanmar/Thai border, in his reports to the General Assembly (A/51/466, annex, paras. 37-51 and A/52/484, annex, paras. 69-142) and to the Commission on Human Rights (E/CN.4/1997/64, paras. 65-100). His initial concern related to reports of military attacks and looting on civilian settlements, forced relocation of the ethnic groups, forced labour for development and industrial projects and portering for military operations. In his last report to the Commission on Human Rights, the Special Rapporteur called upon the Government of Myanmar to take immediate steps in order to put an end to the forced displacement of persons, to prohibit the practice of forced labour and forced portering and to prevent arbitrary killings, and confiscation of property in the ethnic minority areas.

26. The Special Rapporteur visited Thailand in order to inquire into the current situation of the displaced persons on the border of Myanmar with Thailand, and on the human rights violations committed against ethnic minorities and others who had been subjected to various forms of repression by the Government. The itinerary of the Special Rapporteur included Bangkok, Kanchanaburi, Mae Sot, Chiang Mai, Mae Hong Son and camps in the Tak province with large populations of displaced persons. During these visits he was received by representatives of the Thai authorities and met with representatives of international non-governmental organizations and representatives of several ethnic groups. During his visit, the Special

Rapporteur received the testimonies of a total of 50 persons selected from among newly arrived persons from Myanmar, mostly Karen, Shan and Karenni. The information and views obtained in the course of his visits are reflected below under the relevant subject headings.

A. The problem of displacement

27. Internal displacement in Myanmar represents a particular case of human tragedy resulting from conflict between the Government and different ethnic groups. It is estimated that over half a million displaced persons, living in Mon, Karen, Shan and Karenni States, are in need of humanitarian assistance. Since the independence of Myanmar in 1948, the country has suffered from unresolved conflicts between most of the ethnic minorities and the central authorities in spite of a number of ceasefire agreements. These conflicts precipitated insurgencies in several parts of the country which have resulted in large numbers of internally displaced persons and a considerable number who have sought refuge in neighbouring countries, particularly Thailand, Bangladesh and India.

28. The Special Rapporteur is not in possession of independently verified statistics on the number of displaced persons in Myanmar, but local and international NGOs estimate the number in Karen State to be between 100,000 and 200,000. 1/ Unofficial estimates place the current number in Shan State to be over 300,000 2/ and in Karenni State, 70,000. Finally, there are reportedly about 40,000 persons displaced in Mon State.

29. By the end of June 1998, the refugee camp caseload of displaced persons from Myanmar living in Thailand was 112,841. 3/ The breakdown by ethnic group was as follows: 86,823 Karen, 12,665 Mon, 13,353 Karenni. 4/ In addition, there were a number of Shan displaced persons who were not living in refugee camps but were scattered mainly throughout the north of Thailand. It is generally believed that tens of thousands of people from Myanmar have entered Thailand during the last three years.

B. The main causes of displacement

30. The problem of displacement in Myanmar is complex and open to so many different interpretations that a comprehensive assessment is difficult. The causes of displacement are numerous and differ from one region to another, although certain common features and trends can be discerned.

31. The role of the army, in this context, is paramount. Since independence, it has exercised a strong influence over the governing of the ethnic states. Many Karen, Karenni and Shan do not perceive the army as a national army, and soldiers, particularly ethnic Burmese, generally behave towards the local population as if they were enemies.

32. Violence against civilians would appear to have been a fundamental component of the overall military strategy of the Myanmar army. That strategy is designed first to secure resources from the local population, in particular food, combatants and workers, and second to weaken the resource base of insurgent groups and their capacity to govern. To this latter end, the army

not only has undertaken systematically to destroy most of the villages but also, as the local economy is largely based on agriculture, forcibly to displace the rural population so as to disrupt agricultural production.

33. In flagrant violation of the basic rules of humanitarian law, civilians living in rural settlements have been attacked. In some cases, this has resulted in massacres, in others in disorderly flight to safety, often separating families. Those who are captured are often subjected to rape and arbitrary killing, or are held captive to grow food for the army, or made to provide forced labour or portering for the army.

34. After these general observations, it is appropriate to specify the main causes of displacement. These are counter-insurgency operations, forced labour and portering restrictions on farmers and land confiscation. Each is discussed separately below. Displacement is also attributed to major development projects undertaken by the Government in the process of which large numbers of persons are removed from the lands designated for the projects without being assisted in relocation or being appropriately compensated.

1. Counter-insurgency operations

35. Counter-insurgency operations by the army have had an important impact on the displacement of the population, both with regard to the number of persons displaced and the methods employed. These operations have also contributed to the massive uprooting of the rural population by deliberately relocating large numbers of civilians from numerous villages as part of the military strategy against the insurgents. Despite a number of ceasefire agreements signed by the Government and representatives of ethnic groups, the army is still engaged in counter-insurgency operations in Karen, Shan and Karenni States.

36. Although the practice of forced relocations by the military as a means of controlling the population in the ethnic regions is not new, the scale of the relocations increased significantly after 1996. The victims of displacement are mostly peasants, including members of ethnic groups such as the Karen, Karenni, Shan and Mon, who live in areas of insurgency and are victimized by counter-insurgency activities or are caught in the crossfire between the army and the insurgents.

37. Numerous testimonies received by the Special Rapporteur indicate that the civilian population living in or near the combat zone is generally forced to move: in these "grey zones" (zones controlled or influenced by the insurgents) the armed forces often resort to searches, destruction and burning of houses, and confiscation of property and food to force the people to move, temporarily or permanently. Testimonies indicate that no distinction between insurgents and non-combatants is generally made and that the inhabitants of these zones are subjected to indiscriminate torture, beatings and arbitrary arrests by the army.

38. In order to cut the main links between the insurgent groups and the civilian population, entire communities living in the border area between

Myanmar and Thailand are moved to relocation sites which are subject to strict military control. Expulsion orders are issued by the army coupled with the warning that anyone trying to remain in their homes will be shot on sight.

39. The following information provided to the Special Rapporteur is illustrative of the widespread recourse to forced relocation and the consequent violation of most basic rights. Central Shan State has witnessed one of the largest forced relocation programmes, which still continues. From March 1996 the army has ordered village after village in eight townships (Larng Kher, Murng Nai, Nam Zarng, Lai Kha, Murng Kerng, Kun Hing, Ke See and Murng Su) to move to a total of 45 relocation sites. The estimated number of people relocated is over 100,000 from over 600 villages. When relocated, the population is left to fend for itself to find work, food and sanitary and education facilities. In Karenni State, throughout June and July 1996, orders were given to more than 100 villages located between the Pon and Salween Rivers instructing villagers to move to relocation sites near army camps in Sha Daw and Ywa Thit townships. The estimated number of people affected was 20,000-30,000, most of them ethnic Karenni. The army's purpose is apparently to isolate the population in that area from Karenni insurgents of the Kayinni National Progressive Party (KNPP). Army officers are reported to have warned that those who remained in the deserted villages would be considered insurgents or "enemies".

40. In addition to displacement caused by deliberate action, many persons are said to have left for fear of being attacked when the military fronts move close to their places of residence. To avoid losing their homes and sources of livelihood, many communities have resisted displacement as long as possible and have developed different strategies for survival. Several displaced persons living in camps in Thailand described to the Special Rapporteur how people in their village would hide in the forest and return when it was safe to tend to their farms. As the situation worsened, many families fled the village. Since fighting was spreading to different parts of the district, they did not know where to go to find shelter and after one week they returned. The village was finally attacked and the houses destroyed.

2. Forced labour and portering

41. The second reason has to do with the particular phenomenon of forced conscription of civilians into compulsory labour duties for the military authorities. No pay is given for such labour and the period of service can last for months. This practice disrupts family life and prevents people from carrying on their daily work in order to earn a living.

42. The Special Rapporteur received reports that villagers throughout Shan State are being forced by the SPDC to work without payment. The people most seriously affected are those who have been forcibly relocated, as they have been forced to leave their land and become wage labourers and thus cannot afford to work without pay for the military.

43. It is common practice for the military to force villagers to go and work on military bases, either for constructing or maintaining barracks, bunkers or fences, or performing menial tasks like cleaning, weeding, and fetching firewood or water. Even children are forced to do this kind of work:

on 29 May 1998, SPDC troops are reported to have forced 10-15 boys between the ages of 14 and 16 to work at the military bases of LIB 524 and IB 246. They were not fed, and were even beaten up by the soldiers.

44. The Special Rapporteur has received reports that villagers are being forced to grow food for the army. In June 1998, villagers in Kengtung are reported to have been forced by the SPDC to grow chili peppers, beans and garlic on land that was confiscated from them. And on 11 July, SPDC base LIB 102 apparently ordered the civilian population to provide labourers for weeding soya bean and corn farms owned by the military in Murng Pan. Ten persons from each village, from some 15 villages each day, had to bring their own food and tools. Villagers of Kengtong, Murng Nai, said they had been forced in September 1998 to plant yellow beans for the army, then tend the plots and do weeding and fencing for troops at local bases.

45. Throughout 1998, The Special Rapporteur received reports of villagers from Murng Pan, Larng Khur, Murng Nai, Murng Ton and Nam Zarng being forced to work for the army for periods of up to two weeks splitting rocks near the Salween River crossing of Ta Sarng in Shan State. The battalions concerned were IB 225, IB 64, IB 65 and LIB 333. The rocks were conveyed by the army to big cities like Yangon where they were sold for 12,000-15,000 kyats per truckload.

46. Since 4 July 1998, villagers from the Kengtong area are reported to have been forced to drive their oxcarts to carry teak lumber from Kengtong to the SPDC military base of IB 43 at Kunhing. During July and August 427 oxcarts were used.

47. Since April 1998, villagers in 21 villages in the Nam Kham area of Northern Shan State, bordering on China, are reported to have been forced to work on a dam over the Nam Mao River.

48. Throughout 1998, the SPDC military are reported to have been taking porters from the main towns throughout central and southern Shan, where the Shan resistance is operating. The SPDC had been sending out regular military patrols from its bases around the area, each time demanding groups of porters from the civilian population. The households provided porters on a rotation basis, and if someone could not go, they were made to pay 8,000-10,000 kyats to hire a replacement.

3. Restrictions on farmers

49. Because of the massive displacement of the population, farming has apparently been drastically reduced. This has led to food shortages among the rural population generally and has provoked voluntary displacement to other areas in search of assistance and security.

50. The army is reported to be increasingly placing restrictions on the kinds of crops grown by the local farmers, forcing them to grow crops for the troops which they will either consume themselves or sell. On 4 May 1998, in Murng Pan, IB 66 is reported to have ordered farmers to grow no more than a small amount of garlic, whereas farmers had traditionally grown this crop for export to Thailand. They were told they had to grow soya beans for the army

instead. On 23 June, IB 286 in Kaesee told villagers from Murng Nawng and Murng Nang (who had been forcibly relocated) that they needed licences to grow rice and if licenced, they had to give half their rice crop to the army. If they had no licence, their rice fields would be confiscated. On 2 July, SPDC IB 99 in Larng Khur is reported to have ordered all sugarcane farmers to clear two thirds of their sugarcane farms and grow soya beans and yellow beans for the army instead. One farmer who had apparently been granted permission to continue farming as usual was reported to have been beaten, kicked, tortured and then shot to death on 3 August 1998. In September, the villagers of Kengtong, Murng Nai, were said to have been forced to cultivate yellow beans for the SPDC troops at local bases.

4. Land confiscation

51. Another important cause of displacement relates to land confiscation. The majority of the population lives by agriculture. Farms tend to be small and constitute the only income for families. Moreover, land is culturally part of a person's identity. The Special Rapporteur was told that very few legal titles to land exist. This permits the military to confiscate the land that had traditionally belonged to peasants and farmers living in Karenni, Karen and Shan States and to redistribute it to military officials and soldiers.

52. Since June 1998, the authorities are reported to have issued orders for the confiscation from the people in Tachilek of 1,000 acres of land stretching along the Tachilek-Kengtung main road. The confiscated land has been bulldozed, divided into small patches and sold to those who can afford it. People from nine villages have been affected. On 4 June 1998, the Golden Triangle Military Command Commander ordered LIB 422 to confiscate 13 plots of land and rice fields owned by villagers of King-Ka in Zone 2 in Kengtung to expand the military base. The villagers were given a small plot of land each to build a house on, but they had to buy it. They were still forced to pay their rice quota to the SPDC even though their land had been taken from them.

53. While development and industrial projects such as railway construction, and the creation of tourist attractions are being carried out in areas inhabited by minorities, many people are having their lands confiscated without any compensation and are forced to move to designated sites.

C. Patterns and consequences of displacement

54. The Special Rapporteur has ascertained from his contacts with those who have sought refuge in the camps on the Thai side of the Thai-Myanmar frontier that since 1996, there are two distinct categories of internally displaced persons in the ethnic States: the "displaced" and "dispersed". The first category consists mostly of families who were forced to go to relocation sites or army camps, while the second category includes persons who instead fled to the mountains or the jungle, trying to avoid the main roads and to hide from the military. It is much more difficult to identify the dispersed, since they are not concentrated in a group but are literally dispersed throughout the country. While visiting the camps, the Special Rapporteur spoke with both

categories of displaced persons who subsequently fled to Thailand, and in the context of the present report the term "internally displaced" implies both categories.

55. Testimonies received by the Special Rapporteur, as well as observations made by representatives of non-governmental organizations, indicate that the victims of displacement are mostly villagers and farmers who were living in remote areas of Karen, Shan and Karenni States. Most of them have not been officially registered and do not possess any identification cards or other documents.

56. Cases of forced evictions seem to occur with great frequency and as a matter of policy. All the people interviewed by the Special Rapporteur stated that they were given at most one week's notice to move and were told that they would be shot if they did not comply. They were forced to leave their land, their crops and most of their animals. Much of the property was reportedly immediately stolen or confiscated by the army. In some cases, there was adequate time to prepare for departure, so that families or even entire communities could leave together. If not, or if attacked, they had to flee in a disorderly manner, sometimes with the husband, wife and children going in different directions.

57. The internally displaced persons in Myanmar rarely flee in large numbers. They usually move in small groups of a few families or individuals. The areas of expulsion are numerous and spread throughout the country, including in the border areas with Thailand. The displaced's own perceptions of where food and security might be found are determining factors in deciding upon the destination of their flight. The displaced usually move to neighbouring rural areas or to the jungle; others go directly to relocation sites and from there to camps located in Thailand, or directly to Thailand where they often join relatives or friends from the same area. In this regard, the Special Rapporteur was often told during the mission that the army is planting landmines in order to prevent the population from using the routes which take them to their paddy fields or to the Thai border. According to information received, each battalion in the front-line area (along the Myanmar-Thai border) was issued with about 200 landmines and ordered to plant them.

58. The two main considerations which led people to flee were security concerns and the need to have a source of livelihood. These could at times be contradictory concerns. On the one hand, fear of losing one's land constituted a motive for staying if the harvests were sufficient, while on the other hand, fear of attacks was a motive for departing. Conversely, the need to find a source of subsistence had to be weighed against the fear of being caught by the army after having been ordered to move to a relocation site.

59. Another problem affecting the displaced is the disintegration of families and communities. The Special Rapporteur noticed a large number of widows and orphans among the displaced in camps in Thailand. However, numerous communities have remained more or less together in spite of displacement and have maintained many of their cultural traditions. This helps to alleviate to some extent the acute problems of displacement and would no doubt facilitate the process of return to the areas of origin. However,

very few returns to areas of origin seem to be taking place. Continued insecurity coupled with destroyed infrastructure suggest that displaced persons had compelling reasons for wanting to remain in the camps in Thailand.

60. As far as the security situation in the areas of return are concerned, reports continuously reaching the camps speak of, for example, forced labour and portering, arbitrary arrests, detentions and executions by the Myanmar military of persons suspected of sympathizing with insurgents, with no recourse to formal judicial proceedings. In addition, returnees were finding their homes destroyed and their land either burnt or occupied by the army. In such cases, the returnees had no recourse to justice, either because the judicial system did not exist or because it was not functioning independently. The displaced, moreover, had very few resources and means by which to return home. The infrastructure of entire villages had been destroyed and many homes levelled by warfare and looting. Finally, it would seem that the local authorities had no intention of dealing with the assistance and protection problems of the returnees.

61. The Special Rapporteur was told that, for the peasants who had lost their land, either because they had to sell it very cheaply before they fled or because it was destroyed or taken by the army, return is not possible. Where the armed conflict is continuing, return is also not an option.

1. The situation of the dispersed in the jungle

62. Following orders to leave their homes, many villagers avoid moving to relocation sites and usually move first to a nearby rural area or go to the jungle, trying to work in their fields during the day and returning for safety at night. They can remain in hiding for several months as long as they are able to find sufficient food to survive. These villagers live in fear that the soldiers will find them, especially in the dry season. It was reported, for example, that at the start of the dry season in 1998, local army troops shot on site at villagers hiding in the Mi Chaung Theit area.

63. Apart from the lack of security, the lack of food is clearly the main problem facing families living in the jungle. Families supplement their rice porridge by eating wild roots, leaves and fruit. Many families interviewed said that they could not cultivate their crop safely and that when they were discovered their fields and paddies were burned. As a result, without any source of income and without enough food to survive, they try to find their way to Thailand. In addition, people living in the jungle have limited access to health care. They have to rely on an insufficient and informal health-care network in the form of "mobile health teams", which provide medicines and vaccinations. However, it was reported that these mobile teams could not cover all the areas where the displaced hide and live.

2. The situation of the displaced in relocation sites

64. According to testimonies received, relocation sites, as well as the living conditions in the sites, may vary from one place to another. Displaced persons in refugee camps in Thailand describe the sites as either a large,

empty stretch of land surrounded by fences or barbed wire and near a military camp or as the centre of a large village where the army has forced villagers to congregate. The military outpost is normally in the centre of the village.

65. No particular arrangements are made by the authorities to receive the new forced arrivals. There seems to be a food and a health crisis and a general lack of adequate housing and basic services. Villagers have to build their own makeshift huts and provide their own food. Family members living in the relocation sites are often requested to do various tasks for the army. Each family also has to provide one person to work for the army. They perform various duties such as building the fences, cleaning the compound or guarding the site. The interviews did not make clear to what extent facilities for education and access to health care, especially for children, are available. Unemployment is a major problem in the relocation sites. The displaced are used to working their own land and it is difficult to start any sort of work to generate income. When they are able to find work, they are easily exploited. According to testimonies received, many displaced persons, including children, work as daily workers (porters), whose salaries are around US$ 2 per week, for 12-hour working days. Others work in construction. Those who find such jobs are considered to be fortunate, since they have an income.

66. The villagers are not entitled to leave the compound without a pass, for which they have to pay. Their freedom of movement is extremely limited and, in all cases, subject to authorization from the local military battalion. Attempting to flee is said to be interpreted by the authorities as proof of participation in or sympathy with the insurgency and of an intention to report on the abuses committed by the army. Some are required to obtain safe conduct passes or pay high fees at checkpoints for a "permission" to leave. Other sources have reported incidents of women and children being shot at while fleeing in areas near the border with Thailand.

3. Special problems affecting women and children

67. Many of the displaced, in particular women and children, reported that they had been terrorized and subjected to inhuman treatment before taking refuge in Thailand. It was reported that Myanmar soldiers raped and abused women during incursions into the emergency zones or in the relocation sites. In some areas, women who work in the fields still face significant risks of being targeted and victimized.

68. The Special Rapporteur has noted the serious psychological problems facing women and children affected by the crisis. Abuses against women, especially in the course of violent events, reportedly ranged from having seen their children or husband killed to being raped and losing their home and means of subsistence. Interviews held in the course of a short visit to a village revealed that many had suffered from such abuses. It should be mentioned that cultural inhibitions linked to subjects such as sex and the serious social implications of rape and assaults on women compound the problem of lack of outlets for expression and foment deep hatreds.

69. Female-headed households were less able to become self-reliant and were therefore more in need of assistance. In some cases, they were assisted by

other families, for example, in setting up shelters. The numerous children who had been orphaned or separated from their families constituted a particularly vulnerable group. In general, there was a willingness on the part of local families or other displaced persons to adopt the children, at least until their parents could be traced if they were still alive.

70. Some of the most serious problems the displaced and dispersed populations face are in the health domain, largely because of the lack of health services. Children are particularly affected by chronic malnutrition, malaria, diarrhoea and dysentery. The right to health is seriously jeopardized in those circumstances.

71. Displaced children living in the jungle suffer high mortality and malnutrition rates and their flight from their homes often puts them beyond the reach of any assistance or protection. Frequently, displaced children have witnessed the murder of their parents or the destruction of their homes. As a consequence, many children suffer from fear and parents, caught in the day-to-day struggle for survival, often have little energy to devote to caring for them.

72. Rather than attending school, many displaced children have had to help support their families. In any event, many schools are reported to have been destroyed or closed. Public education is officially free; however, many schools are under funded and parents have to pay tuition so that the school can operate. Many displaced children do not speak Burmese and have difficulties in communicating with their teachers. Many children who used to go to school in their native village and learned their native language have to restart their schooling upon arrival in the relocation sites because they are prevented from learning in their own language. This is not only a negation of sound pedagogical principles but a violation of the right to freedom of expression which includes the right to receive and impart information so necessary in the educational field.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

73. The Special Rapporteur has previously reported that Myanmar law and orders of the State Law and Order Restoration Council (SLORC) themselves violate basic freedoms, including the freedoms of expression and association. The Government of Myanmar continues to intimidate its citizens and prevents them from exercising their fundamental rights to freedom of association and expression by prosecuting persons for criminal and treason-related offences. The Special Rapporteur notes that many citizens are still being arrested for peaceful expression of their ideas. As mentioned above, political party leaders and their members are being held, for an undetermined period, against their will and without any charges being brought against them. Moreover, it is evident that the total State domination of the media, together with the existence of a wide range of SLORC orders criminalizing freedom of expression, seriously undermines the exercise of this right as well as the right to freedom of association.

74. Conditions in Myanmar prisons fall short of international standards, i.e. the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

75. The non-acceptance by Myanmar of the customary ICRC procedures for visits to places of detention is highly prejudicial to the amelioration of conditions of detention in Myanmar.

76. The phenomenon of displacement would appear to be limited largely, if not exclusively, to ethnic minorities. The problem is not new and originates mainly from the absence of a political solution dating back to colonial times and before. The ceasefire agreements concluded in recent years are a beginning to a solution but are likely to be fruitless until serious and meaningful measures are taken to engage in a political dialogue which includes the ethnic minorities.

77. The army has been implicated in human rights abuses resulting in displacement. This is partly attributable to the fact that the armed forces constitute the only institution vested with law enforcement. The armed forces are occasionally involved in restoring public order, although no specific training is given for this task and those involved in such operations merely resort to the use of military equipment and military tactics. In such cases a number of provisions of international humanitarian law, such as article 17 of Protocol II Additional to the Geneva Conventions, which prohibits the displacement of civilian populations for reasons related to the conflict, are relevant and must be observed.

78. Impunity remains a very serious problem. Retaliatory massacres of villagers and massive human rights violations of civilians have occurred. In all these instances the right to life and security of the person, in particular of women and children, are violated. In addition, corruption, which is on the rise, is a serious problem particularly as law enforcement and the administration of justice are casualties of military rule.

79. As observed earlier, none of the displaced persons living in Myanmar itself or in Thailand will be able to return home immediately, as their houses and land have been destroyed or others have moved onto their land. Deeply embedded insecurity and fear also prevent return. Where return to the home areas becomes impossible, alternative solutions are required to ensure the basic rights to life, protection of personal security and from cruel, inhuman or degrading treatment, health, education and family unity, among others.

B. Recommendations

80. Since the situation of human rights in Myanmar is worsening and the repression of civil and political rights continues unabated, the Special Rapporteur feels bound to renew the detailed recommendations he made in paragraphs 7 to 97 of his last report to the Commission on Human Rights (E/CN.4/1998/70) and in paragraphs 61 to 63 of his interim report to the General Assembly (A/53/364).

81. In addition, in view of the ever-growing humanitarian crisis in Shan, Karen and Karenni States, in particular, assistance to the displaced and other conflict-affected persons should become a priority for the Government.

82. Because the displaced and other conflict-affected persons have a wide variety of urgent needs, the Government should seek the assistance of the international community, through the United Nations system and its specialized agencies, governmental and intergovernmental organizations, as well as non-governmental organizations, in assessing the nature and extent of the assistance needs and in responding to those needs in a rapid and flexible manner.

83. Clearly, the military solution that has been adopted by the Government in the ethnic areas has become a serious problem rather than a solution. A political solution in the ethnic areas in the context of the political dialogue recommended in paragraphs 79 of the Special Rapporteur's last report to the Commission has become urgent in order to prevent a worsening of the present humanitarian disaster.

Notes

1/ "Forgotten victims of a hidden war: internally displaced Karen in Burma", published by Burma Ethnic Research Group and the Friedrich Naumann Foundation, April 1998.

2/ "Dispossessed: forced relocation and extrajudicial killings in Shan State", Shan Human Rights Foundation, April 1998.

3/ Burmese Border Consortium, "Refugee relief programme - Programme report for the period January to June 1998", July 1998.

4/ Ibid.